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TITLE 14

LOCAL GOVERNMENT

(CHAPTERS 1-53 IN VOLUME 9; CHAPTERS 104-182 IN VOLUME 11A; CHAPTERS 183-295 IN VOLUME 11B; CHAPTERS 296-387 IN VOLUME 12)

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Subchapter 1 — General Provisions

14-54-101. Body corporate and politic.

CASE NOTES

Analysis

In General.
Association for Legal Defense Program.
Contracts.

In General.

Municipal corporation has standing to challenge an annexation election as a property owner; therefore, a trial court erred in dismissing the case for failure to state a claim. City of Dover v. City of Russellville, 352 Ark. 299, 100 S.W.3d 689 (2003).

Association for Legal Defense Program.

Legal defense program was not a dry-hole contract because it was within the purview of this section for municipalities to create and join such to promote the general welfare of their respective municipalities. Stromwall v. Van Hoose, 371 Ark. 267, 265 S.W.3d 93 (2007).

Municipality is authorized by this section to participate in an association for the promotion of the general welfare of the city and to join with other municipalities to purchase services, and the payment of fees to a legal defense program as a subset of the association is permissible. Therefore, summary judgment was properly granted in a case alleging an illegal exaction since there was no citation of authority for an argument that there was an illegal use of public funds relating to the payment of punitive damages in a settlement; moreover, the fees associated with the joining of a defense program were allowed under this section. Stromwall v. Van Hoose, 371 Ark. 267, 265 S.W.3d 93 (2007).

Contracts.

Given that this section specifically allowed for municipalities to contract and because nothing in the record indicated a limitation on appellant city's and appellee city's ability to contract, the cities were capable of making a contract by joint resolution to cooperate to obtain funding for a proposed municipal outfall sewer line from a wastewater treatment facility to a point downstream of the city limits of appellant city. City of Dardanelle v. City of Russellville, 372 Ark. 486, 277 S.W.3d 562 (2008).

14-54-102. Powers and restrictions prescribed.

Cross References. Premises and real property used by criminal gangs, organizations, or enterprises, or used by anyone in committing a continuing series of violations — Civil remedies, § 5-74-109.

Criminal nuisance abatement boards, § 14-54-1701 et seq.

Common nuisance declared, § 16-105-402.

14-54-103. General powers of cities and towns.

CASE NOTES

Analysis

Nuisances.
Public Health.

Nuisances.

In a case involving a rock quarry that was located entirely outside, but within one mile of, the corporate limits of a city in which a district court issued a preliminary injunction enjoining Fayetteville, Ark. Ordinance No. 5280 prior to its enforcement date, city argued that the company that operated the quarry was unlikely to succeed on the merits of its claim that the city authority to license and regulate its

quarry, because the ordinance was enacted pursuant to subdivision (1) of this section. Contrary to the city's argument, since the quarry was located outside the corporate city limits but within one mile of those limits, the city could not regulate the quarry without a judicial determination that its activities constituted a nuisance, and no such judicial determination had been made; the quarry was not a nuisance per se. Rogers Group, Inc. v. City of Fayetteville, 629 F.3d 784 (8th Cir. 2010).

Public Health.

A town has the authority to legislate for the protection of public health. Phillips v. Town of Oak Grove, 333 Ark. 183, 968 S.W.2d 600 (1998).

14-54-104. Additional powers of cities of the first class.

CASE NOTES

Streets, Alleys, Etc.

Ordinance vacating a street exceeded the scope of subdivision (2) when it attempted to extinguish an abutting landowner's property right of ingress and egress over the street without compensation. Wright v. City of Monticello, 345 Ark. 420, 47 S.W.3d 851 (2001).

Trial court did not err in deciding that § 14-54-303 was controlling for the town to vacate a street, because an incorporated town's ability to vacate a street under § 14-54-303 was independent, and §§ 14-301-301 to 14-301-303 had no application when an incorporated town used its authority under § 14-54-303. Riley v. Town of Higginson, 2009 Ark. App. 294, 307 S.W.3d 34 (2009).

Subchapter 3 — Real and Personal Property

SECTION.
14-54-302. Purchase, lease, and sale authorized.
14-54-304. Property exchange by municipalities.

14-54-302. Purchase, lease, and sale authorized.

(a)(1) Municipal corporations are empowered and authorized to sell, convey, lease, rent, or let any real estate or personal property owned or controlled by the municipal corporations. This power and authorization shall extend and apply to all such real estate and personal property, including that which is held by the municipal corporation for public or governmental uses and purposes.

(2) Municipal corporations are empowered and authorized to buy any real estate or personal property.

(b)(1) Municipal corporations are also empowered and authorized to donate property, or any part thereof, to the federal government or any agency thereof, for any one (1) or more of the following purposes, that is, having the real estate, personal property, or both, activated, reactivated, improved, or enlarged by the donee.

(2)(A) The municipal corporation may donate the fee simple title and absolute interest, without any reservations or restrictions, in and to all real estate, personal property, or both, or any part of the property, to the federal government, if this property was previously conveyed or otherwise transferred by the federal government to the municipal corporation without cost to the municipal corporation.

(B) All other donation instruments shall contain provisions by which the title to the property donated shall revert to the municipal corporation when the donated property is no longer used by the donee for the purposes for which it was donated.

(c) The execution of all contracts and conveyances and lease contracts shall be performed by the mayor and city clerk or recorder, when authorized by a resolution in writing and approved by a majority vote of the city council present and participating.

History. Acts 1935, No. 176, § 2; Pope's Dig., § 9539; Acts 1953, No. 13, § 1; 1959, No. 159, § 1; 1977, No. 823, § 1; 1983, No. 183, § 2; A.S.A. 1947, § 19-2310; Acts 2005, No. 436, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock. L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Local Government, 28 U. Ark. Little Rock. L. Rev. 373.

CASE NOTES

Contracts Not Formally Authorized.

Absence of a city council's resolution was fatal to the validity and viability of an alleged Memorandum of Understanding between a mayor and the owner of a stagecoach who sought to sell the stagecoach to the city. Dotson v. City of Lowell, 375 Ark. 89, 289 S.W.3d 55 (2008).

14-54-303. Authority of incorporated towns.

CASE NOTES

Proper Authority.

Trial court did not err in deciding that this section was controlling for the town to vacate a street, because an incorporated town's ability to vacate a street under this section was independent, and §§ 14-301-301 to 14-301-303 had no application when an incorporated town used its authority under this section. Riley v. Town of Higginson, 2009 Ark. App. 294, 307 S.W.3d 34 (2009).

14-54-304. Property exchange by municipalities.

Municipalities are authorized to exchange properties, real or personal, with other municipalities or with counties. Provided, any such exchange shall be approved by ordinance of the governing body of the municipality and shall be accomplished in accordance with procedures prescribed by the governing body.

History. Acts 1999, No. 1248, § 2.

Publisher's Notes. Acts 1999, No. 1248 became law without the Governor's signature.

Subchapter 8 — Public Health

14-54-802. Regulation of burials generally.

CASE NOTES

Corporate Limits.

Conway, Ark., Ordinance 0-94-54 may be read harmoniously with § 20-17-903; municipalities that had passed a relevant zoning ordinance in accordance with § 14-56-416 could regulate the construction and expansion of cemeteries pursuant to the ordinance, and municipalities that had not done so had only the benefit of §§ 20-17-903, 14-54-803, and this section, such that the city's denial of the landowner's request for a conditional-use-permit precluded the establishment of a cemetery on his property. Brock v. Townsell, 2009 Ark. 224, 309 S.W.3d 179 (2009).

14-54-803. Power to require burial outside municipal limits.

CASE NOTES

Corporate Limits.

Conway, Ark., Ordinance 0-94-54 may be read harmoniously with § 20-17-903; municipalities that had passed a relevant zoning ordinance in accordance with § 14-56-416 could regulate the construction and expansion of cemeteries pursuant to the ordinance, and municipalities that had not done so had only the benefit of §§ 20-17-903, 14-54-802, and this section, such that the city's denial of the landowner's request for a conditional-use-permit precluded the establishment of a cemetery on his property. Brock v. Townsell, 2009 Ark. 224, 309 S.W.3d 179 (2009).

Subchapter 9 — Regulation of Unsanitary Conditions

SECTION.
14-54-902. Notice to unknown or nonresident owners.
14-54-903. Refusal of owner to comply.
14-54-904. Enforcement of lien for clearance by municipality.
14-54-905. Federal programs.

Effective Dates. Acts 2011, No. 903, § 3: Mar. 31, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that cities in Arkansas are facing a significant increase in abandoned homes; that these homes can be a strain on the cities and create unsafe conditions; and that this act is immediately necessary because federal moneys are available to assist cities to combat this problem. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-54-901. Municipal authority.

CASE NOTES

Cited: Tsann Kuen Enters. Co. v. Campbell, 355 Ark. 110, 129 S.W.3d 822 (2003).

14-54-902. Notice to unknown or nonresident owners.

(a)(1) In case the owner of any lot or other real property is unknown or his or her whereabouts is not known or he or she is a nonresident of this state, then a copy of the written notice under § 14-54-903 shall be posted upon the premises.

(2) Before any action to enforce the lien, the municipal recorder or the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents.

(b)(1) Thereupon, service of the publication as provided for by law against nonresident defendants may be had.

(2) An attorney ad litem shall be appointed to notify the defendant by certified letter addressed to his or her last known place of residence if it can be found.

(c) Except as provided in subsection (b) of this section, notices required by this subchapter shall be published, mailed, or delivered by the municipal recorder or the city clerk or other person as designated by the governing body of the municipality.

(d) Notwithstanding any other provision of law, after a notice has been issued for a specific violation of an order under § 14-54-901 directing an owner to eliminate a condition on the owner's property, an additional notice for a subsequent violation of that specific violation within the same calendar year shall not be required before the issuance of a citation.

History. Acts 1943, No. 100, § 3; A.S.A. 1947, § 19-2327; Acts 1989, No. 239, § 2; 2009, No. 503, § 1.

Amendments. The 2009 amendment subdivided (a) and (b); substituted "certified" for "registered" in (b)(2); added (d); and made minor stylistic changes.

CASE NOTES

Cited: Tsann Kuen Enters. Co. v. Campbell, 355 Ark. 110, 129 S.W.3d 822 (2003).

14-54-903. Refusal of owner to comply.

(a) As used in this section:

(1)(A) "Clean-up lien" means a lien securing the cost of work undertaken by a town or city to remove, abate, or eliminate a condition in violation of local codes or ordinances.

(B) A clean-up lien may have priority against other lienholders as provided in this section;

(2) "Court lien" means a lien securing the fines or penalties imposed by a court of competent jurisdiction against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes that have been secured by a court lien by action of the local governing body;

(3) "Priority clean-up lien" means a clean-up lien for work undertaken by a city or town on an unsafe and vacant structure or weed lot that is given priority status over other lienholders following notice and hearing;

(4) "Unsafe and vacant structure" or an "abandoned home or residential property" means:

(A) A structure located on previously platted and subdivided property that is not fit for human habitation and has been declared unsafe and vacant by the city or town in which it is located in violation of an applicable ordinance; or

(B) A home or residential property that is:

(i) Unoccupied;

(ii) In violation of a city safety standard; and

(iii) Located in an area eligible for federal funds under § 14-54-905; and

(5) "Weed lot" means a previously platted and subdivided lot that is vacant or upon which an unsafe and vacant structure is located and that contains debris, rubbish, or grass which is higher than that permitted by local ordinance.

(b) If the owner or lienholder of any lot or other real property within an incorporated town or city neglects or refuses to remove, abate, or eliminate any condition under an ordinance passed by the city or town as provided in § 14-54-901, after having been given seven (7) days' notice in writing to do so, then the town or city may do whatever is necessary to correct the condition and to charge the cost thereof to the owner of the lots or other real property.

(c)(1) The town or city is given a lien against the property for the costs, including all administrative and collection costs.

(2) The town or city shall file the lien with the circuit clerk no later than one hundred twenty (120) days after the town or city completes the clean-up work on the property.

(3) The town or city may perfect its clean-up lien as a lien against the property if the property:

(A) Contains an unsafe and vacant structure; or

(B) Has been cited as a weed lot.

(4) The clean-up lien amount shall equal costs, including administrative costs, that the city or town incurs to help bring the property into compliance with local ordinances because the owner or lienholder failed to remove or repair an unsafe and vacant structure or failed to correct the conditions that caused the property to become a weed lot within the time required by the notice.

(5)(A) If a court of competent jurisdiction levies fines or penalties against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes, then the local governing body, by majority vote, from time to time and subject to notice and hearing provided by this section, may secure any outstanding court fines or penalties resulting from the owner's failure to clean up an unsafe and vacant structure or weed lot with a court lien against the property for the full value of all the outstanding fines and penalties.

(B) A court lien does not have first priority status over prior recorded liens and may be imposed in addition to clean-up liens.

(6)(A) Notices shall be sent by regular mail and by certified mail, return receipt requested.

(B) Notice to an owner is sufficient if sent to the owner's address of record with the applicable county treasurer or collector.

(7)(A) If the city or town wishes to secure a priority clean-up lien, it shall provide seven (7) business days' notice to lienholders before undertaking any work at the property.

(B) Notice is sufficient if the notice is sent to the lienholder's address shown in the relevant land records.

(C) Cities and towns are not required to give notices to holders of unrecorded liens or to unrecorded assignees of lienholders.

(D) Any lienholder receiving notice under this section shall send, within seven (7) business days from receipt of the notice, a written response to the city or town indicating whether the owner of the property is in default under the terms of the note or mortgage.

(d) Any notice required under this section may be issued by a:

(1) Police officer employed by the city or town;

(2) City or town attorney; or

(3) Code enforcement officer employed by the city or town.

(e)(1)(A) After the work has been completed, the city or town shall provide second notice to the owner of the total amount of the clean-up lien, including administrative and filing costs.

(B) If the city or town wishes to secure a priority clean-up lien after the work has been completed, it shall provide second notice to the lienholders of record of the total amount of the clean-up lien.

(2) Cities and towns are not required to give notice of court liens to prior lienholders.

(3) Notice of the amount of a clean-up lien or a court lien may be combined with the notice of the hearing before the governing body to create and impose the clean-up lien or court lien.

(f) The amount of any clean-up lien or court lien provided in this section may be determined at a public hearing before the governing body of the city or town held after thirty (30) days' written notice by mail, return receipt requested, to the owner of the property if the name and address of the owner are known and to the lienholders of record.

(g) If the name of the owner cannot be determined, then the amount of the clean-up lien or court lien shall be determined at a public hearing

before the governing body of the city or town only after publication of notice of the hearing in a newspaper having a bona fide circulation in the county where the property is located for one (1) insertion per week for four (4) consecutive weeks.

(h)(1) The determination of the governing body confirming the amount of any clean-up lien or court lien and creating and imposing any clean-up lien or court lien under this section is subject to appeal by the property owner or by any lienholder of record in the circuit court, filed within forty-five (45) days after the determination is made.

(2) If the owner or lienholder fails to appeal in this time, the lien amount is fully perfected and not subject to further contest or appeal.

(i) The city or town shall file its lien with the circuit clerk no later than sixty (60) days after the governing body of the city or town confirms the lien amount, or if the lien is appealed, within sixty (60) days after the city or town wins on appeal.

(j)(1) If the city or town wishes to secure a first-priority status for any priority clean-up lien created and imposed under this section, it shall file an action with the circuit court within which the property is located seeking a declaration that the clean-up lien is entitled to priority over previously recorded liens and naming the holders of the recorded liens as defendants.

(2) Priority status shall be awarded to the priority clean-up lien with respect to any previously recorded lien if the court determines that such lienholder has failed to exercise its rights to foreclose its lien when the obligation it secures becomes in default or has failed to pay the costs of work undertaken by a city or town that composes the clean-up lien. However, the amount as to which the clean-up lien shall have priority shall be the amount the court finds reasonable and is limited to:

(A) No more than one thousand dollars ($1,000) for grass or weed cutting;

(B) No more than five thousand dollars ($5,000) to board and secure the property;

(C) No more than seven thousand five hundred dollars ($7,500) to demolish any structures on the property; or

(D) No more than fifteen thousand dollars ($15,000) for environmental remediation.

History. Acts 1943, No. 100, § 2; A.S.A. 1947, § 19-2326; Acts 1989, No. 239, § 1; 2005, No. 887, § 1; 2007, No. 854, § 1; 2009, No. 143, § 1; 2011, No. 903, § 1.

Amendments. The 2007 amendment added (a) and redesignated the remaining subsections accordingly; inserted "or lienholder" in present (b); added "including all administrative and collection costs" and made a minor punctuation change in present (c)(1); added (c)(3) through (c)(7); substituted "Any notice required under this section" for "The notice" in present (d); and added (e) through (j).

The 2009 amendment inserted "or ordinances" in (a)(1)(A); inserted "priority" preceding "clean-up" in (c)(7)(A), (j)(1), and (j)(2); deleted "as may be provided for" following "condition" in (b), in (e), inserted (e)(1)(B), redesignated the remainder of (e)(1) accordingly, and deleted "and lienholders of record" following "notice to the owner" in (e)(1)(A); and made minor stylistic changes throughout the section.

The 2011 amendment added the (a)(4)(A) designation and (a)(4)(B); and inserted "or an abandoned home or residential property" in the introductory language of (a)(4).

14-54-904. Enforcement of lien for clearance by municipality.

(a) The liens provided for in § 14-54-903 may be enforced and collected at any time within ten (10) years after a lien has been filed in either one (1) of the following manners:

(1) By an action for foreclosure in the circuit court by the city or town, or if the city or town has established a land bank, by a land bank that has been assigned the lien; or

(2)(A) The amount so determined at the hearing, plus ten percent (10%) penalty for collection, shall be certified by the governing body of the municipality to the tax collector of the county where the municipality is located and placed by him or her on the tax books as delinquent taxes and collected accordingly.

(B) The amount, less three percent (3%) thereof, when so collected shall be paid to the municipality by the county tax collector.

(b)(1)(A) In any situation in which a city of the first class or city of the second class issues an order for the removal, repair to return the structure to compliance with minimum building code standards, or razing of a building or house under the provisions of § 14-56-203 and such order is not complied with by the owner of the building or house and the city then removes, repairs, or razes the building or house, a lien is granted and given against the real property for the cost of the removal, repair, or razing.

(B) If the city determines to repair the building or house to meet the minimum building code standards, the city shall comply with all necessary requirements under § 14-58-303 for competitive bidding for purchases of supplies and materials or for contracts for work or labor needed to complete the repairs on the building or house.

(2) The lien granted by this subsection shall also be enforced pursuant to the lien enforcement procedures set forth in subsection (a) of this section.

(c) In all suits brought to enforce the liens described in this section, the reimbursement of costs, including title search fees and reasonable attorney's fees, shall be awarded to the municipality.

History. Acts 1943, No. 100, § 4; 1979, No. 339, § 1; 1983, No. 80, § 1; A.S.A. 1947, § 19-2328; Acts 2001, No. 1538, § 1; 2005, No. 887, § 2; 2007, No. 854, § 2.

A.C.R.C. Notes. Acts 2005, No. 887, § 2 purported to amend subsection (a) of this section but set out only subdivisions (a)(1) and (a)(2)(A)(i)(*a*). However, the remainder of the material in subsection (a) was not set out and deleted in accordance with the rules governing repeals and does not indicate legislative intent to repeal. Accordingly, the remainder of subsection (a) has not been removed by the ACRC.

Amendments. The 2007 amendment, in (a), inserted "at any time within ten (10) years after the lien has been filed" and made a minor stylistic change; rewrote (a)(1); deleted former (a)(2)(A)(i) and (a)(2)(A)(ii); and redesignated former (a)(2)(B)(i) and (a)(2)(B)(ii) as present (a)(2)(A) and (a)(2)(B).

CASE NOTES

Analysis

Constitutionality.
Tax Collector.

Constitutionality.

Ark. Const., Art. 16, § 5 does not apply to the collection by a tax collector of a grass-cutting lien for a city pursuant to this section. Tucker v. Holt, 343 Ark. 216, 33 S.W.3d 110 (2000).

Tax Collector.

This section provides the tax collector with authority to collect a grass-cutting lien for a city. Tucker v. Holt, 343 Ark. 216, 33 S.W.3d 110 (2000).

A tax collector had authority to collect a grass-cutting lien for a city where the appropriate ordinance was passed by the city council and the city's governing body properly certified the amount of the lien to the county tax collector for collection. Tucker v. Holt, 343 Ark. 216, 33 S.W.3d 110 (2000).

14-54-905. Federal programs.

An owner of an abandoned home or residential property that is located in a designated neighborhood stabilization or revitalization area may voluntarily participate in a United States Department of Housing and Urban Development's housing program if federal funds are available.

History. Acts 2011, No. 903, § 2.

Subchapter 13 — Public Recreation and Playgrounds

SECTION.
14-54-1303. [Repealed.]

14-54-1303. [Repealed.]

Publisher's Notes. This section, prohibiting the use of state aid for recreational purposes, was repealed by Acts 2007, No. 63, § 1. The section was derived from Acts 1941, No. 291, § 2; A.S.A. 1947, § 19-3602.

Subchapter 14 — Miscellaneous Regulations

SECTION.
14-54-1411. Firearms and ammunition.

14-54-1411. Firearms and ammunition.

(a) As used in this section, "local unit of government" means a city, town, or county.

(b)(1)(A) A local unit of government shall not enact any ordinance or regulation pertaining to, or regulate in any other manner, the ownership, transfer, transportation, carrying, or possession of firearms, ammunition for firearms, or components of firearms, except as otherwise provided in state or federal law.

(B) This shall not prevent the enactment of an ordinance regulating or forbidding the unsafe discharge of a firearm.

(2)(A) A local unit of government shall have no authority to bring suit and shall have no right to recover against any firearm or ammunition manufacturer, trade association, or dealer for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public.

(B) The authority to bring any suit and the right to recover against any firearm or ammunition manufacturer, trade association, or dealer for damages, abatement, or injunctive relief shall be reserved exclusively to the State of Arkansas.

(C) Provided, this shall not prevent a local unit of government from bringing suit against a firearm or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the local unit of government.

(c)(1) Notwithstanding subsection (b) of this section, the governing body of a local unit of government, following the proclamation by the Governor of a state of emergency, may enact an emergency ordinance regulating the transfer, transportation, or carrying of firearms or components of firearms.

(2) Such emergency ordinance shall not be effective for a period of more than twenty (20) days and shall be enacted by a two-thirds (⅔) majority of the governing body.

History. Acts 1993, No. 1100, §§ 1-3; 1999, No. 951, § 2.

Subchapter 15 — Violation of Municipal Health and Safety Codes

SECTION.
14-54-1501. Intent.
14-54-1502. Common nuisance declared.
14-54-1503. Action to abate — Permanent injunction — Verification of complaint.
14-54-1504. Temporary injunction — Bond required — Precedence.
14-54-1505. Dismissal for want of prosecution.
14-54-1506. Order of abatement — Lien for costs — Enforcement.
14-54-1507. Order of abatement — Damages.
14-54-1508. Release of the building to owner.
14-54-1509. Lien — Enforcement.
14-54-1510. Criminal violations — Penalties.

14-54-1501. Intent.

The intent of the General Assembly of the State of Arkansas in this subchapter is to enact civil remedies that eliminate any conduct within a municipality which constitutes a nuisance.

History. Acts 1999, No. 1561, § 1.

14-54-1502. Common nuisance declared.

(a) Conduct within a municipality that unreasonably interferes with the use and enjoyment of lands of another, including conduct on property which disturbs the peaceful, quiet, and undisturbed use and enjoyment of nearby property, constitutes a common nuisance.

(b) For purposes of this subchapter, a common nuisance shall not include conduct which is permitted by and in conformance with city ordinances.

(c) A common nuisance shall include any three (3) separate district court convictions of health and safety code violations with respect to any one (1) lot or parcel of property within a one-year period or one (1) such conviction if the offense constitutes an imminent threat to the health, safety, or welfare of any citizen. Such conduct is declared to be detrimental to the law-abiding citizens of the municipality and may be subject to an injunction, a court-ordered eviction, or a cause of action for damages as provided for in this subchapter.

History. Acts 1999, No. 1561, § 2.

14-54-1503. Action to abate — Permanent injunction — Verification of complaint.

(a) Whenever there is reason to believe such a common nuisance is kept or maintained or exists in any city, a circuit court may enjoin permanently the person conducting or maintaining the nuisance and the owner, lessee, or agent of the building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

(b) For activities involving multiple convictions of municipal code violations, the city attorney may bring the action permitted in this subchapter. For other activities constituting a nuisance as defined in § 14-54-1502, any citizen of the city may bring the action in his or her own name.

(c) The complaint in the action shall be certified, unless the action is brought by the city attorney.

History. Acts 1999, No. 1561, § 3.

14-54-1504. Temporary injunction — Bond required — Precedence.

(a) If the existence of the nuisance is shown in the action to the satisfaction of the court, the court shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of the nuisance.

(b) On granting the temporary writ, the court shall require a bond on the part of the applicant to the effect that the applicant will pay to the enjoined defendant such damages, not exceeding an amount to be specified, as the defendant sustains by reason of the injunction should

the court finally decide that the applicant was not entitled to the injunction. No bond shall be required where the proceeding is instituted by the city attorney.

(c) The action shall be filed in the circuit court and have precedence over all other actions except election contests, hearings on injunctions, and hearings under §§ 5-74-109 and 16-105-403.

History. Acts 1999, No. 1561, § 4.

14-54-1505. Dismissal for want of prosecution.

(a) If the complaint is filed by a citizen, it shall not be dismissed by the plaintiff for want of prosecution except upon a sworn statement made by the plaintiff setting forth the reasons why the action shall be dismissed and by dismissal ordered by the court.

(b) If the action is brought by a citizen and the court finds there was no reasonable ground or cause for the action, costs shall be assessed against the plaintiff.

History. Acts 1999, No. 1561, § 5.

14-54-1506. Order of abatement — Lien for costs — Enforcement.

(a) If the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the judgment in the case, and plaintiff's costs in carrying out the order shall constitute a lien upon the property, building, or place.

(b) The lien is enforceable and collective by execution issued by order of the court.

History. Acts 1999, No. 1561, § 6.

14-54-1507. Order of abatement — Damages.

(a) If the existence of the nuisance is established in the action, an order of abatement shall be entered as a part of the judgment. The order shall provide for any appropriate equitable relief as determined by the court to be necessary to abate the nuisance and may further provide, if determined to be the least restrictive alternative available to effectively accomplish the abatement, for the closing of the building or place for such period of time as determined to be necessary by the court as adequate to abate the nuisance.

(b) An alternative to closure may be considered only as provided in this section.

(c) If the court finds that any vacancy resulting from closure of the building or place may create a nuisance or that closure is otherwise harmful to the community, in lieu of ordering the building or place closed, the court may order the person who is seeking to keep the premises open to pay damages to the city in an amount equal to the fair

market rental value of the building or place, for such period of time as determined appropriate by the court.

(d) These funds shall be used either to investigate and litigate future nuisance abatement actions or by the city for the purpose of neighborhood safety and enhancement programs.

(e) For purposes of this section, the actual amount of rent being received for the rent of the building or place or the existence of any vacancy therein may be considered, but shall not be the sole determinant of the fair market rental value.

(f) Expert testimony may be used to determine the fair market rental value.

(g) In addition, the court may award damages equal to the plaintiff's costs in the investigation and litigation of the abatement action, not to exceed five thousand dollars ($5,000), against any or all of the defendants based upon the severity of the nuisance and its duration.

(h) The damages may be collected in any manner provided for the collection of any civil judgment.

(i) While the order of abatement remains in effect, the building or place is in the custody of the court.

History. Acts 1999, No. 1561, § 7.

14-54-1508. Release of the building to owner.

(a) If the owner of the building or place has not been guilty of any contempt of court in the proceedings and appears and pays all costs, fees, and allowances that are liens on the building or place and files a bond in the full value of the property conditioned that the owner will immediately abate any nuisance that may exist at the building or place and prevent it from being a nuisance within a period of one (1) year thereafter, the court, if satisfied of the owner's good faith, may order the building or place to be delivered to the owner and the order of abatement canceled so far as it may relate to the property.

(b) The release of property under the provisions of this section does not release it from any judgment, lien, penalty, or liability to which it may be subject.

History. Acts 1999, No. 1561, § 8.

14-54-1509. Lien — Enforcement.

(a) Whenever the owner of a building or place upon which the act or acts constituting contempt have been committed or the owner of any interest therein has been guilty of contempt of court and fined in any proceedings under this subchapter, the fine is a lien upon the building or place to the extent of the owner's interest in it.

(b) The lien is enforceable and collectible by execution issued by order of the court.

History. Acts 1999, No. 1561, § 9.

14-54-1510. Criminal violations — Penalties.

A violation of or disobedience of the injunction or order for abatement is punishable as contempt of court by a fine of not less than two hundred dollars ($200) nor more than one thousand dollars ($1,000) or by imprisonment in the county jail for not less than one (1) month nor more than six (6) months, or both.

History. Acts 1999, No. 1561, § 10.

Subchapter 16 — The Affordable Housing Accessibility Act

SECTION.
14-54-1601. Title.
14-54-1602. Definitions.
14-54-1603. Municipal construction and installation standards.
14-54-1604. Municipal regulation of manufactured homes.
14-54-1605. Regulation of mobile homes.
14-54-1606. Exceptions.

Effective Dates. Acts 2003, No. 624, § 2: Oct. 1, 2003.

14-54-1601. Title.

This subchapter shall be known and cited as the "Affordable Housing Accessibility Act".

History. Acts 2003, No. 624, § 1.

14-54-1602. Definitions.

As used in this subchapter:

(1) "Federal standards" mean the Federal Manufactured Home Construction and Safety Standards, 24 C.F.R. pt. 3280, promulgated by the United States Department of Housing and Urban Development under the authority of 42 U.S.C. § 5401 et seq., as it existed on January 1, 1976;

(2) "Manufactured home" means a dwelling unit constructed in a factory in accordance with the federal standards and meeting the definitions set forth in the federal standards and under § 20-25-102; and

(3) "Mobile home" means a dwelling unit constructed in a factory before the enactment of the federal standards.

History. Acts 2003, No. 624, § 1.

14-54-1603. Municipal construction and installation standards.

(a) Municipalities shall not establish or continue in effect any ordinance or regulation that sets standards for manufactured home construction or safety that are not identical to the federal standards.

(b) Municipalities shall not establish or continue in effect any ordinance or regulation that sets standards for manufactured home installation that are inconsistent with the state standards for installation set forth under § 20-25-106 and the design of the manufacturer.

History. Acts 2003, No. 624, § 1.

14-54-1604. Municipal regulation of manufactured homes.

(a)(1) Municipalities that have zoning ordinances shall allow the placement of manufactured homes on individually owned lots in at least one (1) or more residential districts or zones within the municipality.

(2) Municipalities shall not establish or continue in effect any ordinance or regulation that restricts the placement of manufactured homes only in mobile home parks, subdivisions, or land-lease communities.

(b) Municipalities may establish reasonable regulations or conditions for the placement of manufactured homes within the jurisdiction, including, but not limited to:

(1) Perimeter foundation enclosures;

(2) Connection to utilities;

(3) Building setbacks;

(4) Side or rear yard offsets;

(5) Off-street parking;

(6) Construction of carports, garages, and other outbuildings;

(7) Entries and exits, porches, decks, and stairs; and

(8) Other regulations or conditions that are applicable to other single-family dwellings in the same residential district or zone.

(c) Municipalities shall not impose regulations or conditions on manufactured homes that prohibit the placement of manufactured homes or that are inconsistent with the regulations or conditions imposed on other single-family dwellings permitted in the same residential district or zone.

History. Acts 2003, No. 624, § 1.

14-54-1605. Regulation of mobile homes.

Municipalities may prohibit the placement of mobile homes in all residential districts or zones or may restrict the placement of mobile homes to designated mobile home parks, subdivisions, or land-lease communities.

History. Acts 2003, No. 624, § 1.

14-54-1606. Exceptions.

(a) This subchapter shall not supersede, prevent, or preempt any valid covenants or bills of assurance.

(b) This subchapter shall not require that manufactured homes be permitted in historic districts.

History. Acts 2003, No. 624, § 1.

Subchapter 17 — Criminal Nuisance Abatement Boards

SECTION.
14-54-1701. Legislative intent.
14-54-1702. Creation of criminal nuisance abatement board.
14-54-1703. Filing of complaint with board.
14-54-1704. Hearing and board findings.
14-54-1705. Order of abatement.
14-54-1706. Effective date of an order.
14-54-1707. Appeals to circuit court.
14-54-1708. Violations of orders or continuations of nuisance.
14-54-1709. Supplemental measure.
14-54-1710. Immunity.

Effective Dates. Acts 2003, No 1190, § 11: Apr. 9, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that municipalities in the state have the authority to create criminal nuisance abatement boards; that this act is needed to provide proper procedures for the boards and procedures for appeals to the circuit court; and that this act is immediately necessary because without proper procedures citizens of the state could be harmed by actions of the board without recourse to the circuit courts. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Cross References. Common nuisance declared, § 16-105-402.

Municipal corporations' powers and restrictions, § 14-54-102.

Premises and real property used by criminal gangs, organizations, or enterprises, or used by anyone in committing a continuing series of violations — Civil remedies, § 5-74-109.

Prostitution, § 5-70-102.

14-54-1701. Legislative intent.

It is the intent of the General Assembly to promote, protect, and improve the health, safety, and welfare of the citizens of the municipalities of this state by authorizing the creation of criminal nuisance abatement boards with authority to impose remedies, administrative fines, and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of abating public nuisance as defined by state law.

History. Acts 2003, No. 1190, § 1.

14-54-1702. Creation of criminal nuisance abatement board.

(a) Any city of the first class or city of the second class by ordinance may create a quasi-judicial board to hear complaints regarding places or premises used as public or common nuisance as defined by §§ 5-74-109, 14-54-1502, and 16-105-402 or that are used for prostitution as defined by § 5-70-102.

(b) A criminal nuisance abatement board created under this subchapter shall be composed of five (5) citizens of the creating city who shall be appointed by the governing body of the city.

(c) The governing body of the city shall select one (1) of the members of the board to call the first meeting and serve as chair at the first meeting.

(d)(1) At the first meeting, members of the board shall draw lots so that:

(A) One (1) member shall serve a three-year term;

(B) Two (2) members shall serve a four-year term; and

(C) Two (2) members shall serve a five-year term.

(2) All successors appointed to the board shall serve one (1) five-year term.

(e) The members shall elect a chair and any other officers needed to conduct the business of the board.

(f) The governing body of the city shall provide necessary staff for the board.

(g) The board may promulgate rules and regulations needed to conduct the hearings on the complaints concerning places and premises used as public or common nuisances.

History. Acts 2003, No. 1190, § 2.

14-54-1703. Filing of complaint with board.

(a)(1) Any employee, officer, or resident of the city may bring a sworn complaint before the criminal nuisance abatement board against the owner of a place or premises that may constitute a nuisance.

(2) A hearing shall be conducted after the owner of the place or premises has been given ten (10) calendar days' notice of the hearing.

(b) The notice shall:

(1) Be provided to the owner of the place or premises according to Rule 4(d) of the Arkansas Rules of Civil Procedure; and

(2) Include a copy of the complaint and a copy of the ordinance creating the board.

(c) If notice of the hearing is made by personal service, the notice may be served by a certified law enforcement officer or a certified court process server.

History. Acts 2003, No. 1190, § 3.

14-54-1704. Hearing and board findings.

(a) At a hearing:

(1) A criminal nuisance abatement board may consider any evidence, including evidence of the general reputation of the place or premises; and

(2) The owner of the premises shall have an opportunity to present evidence in his or her defense.

(b) All witnesses at a hearing shall be sworn.

(c) After the hearing, the board may declare the place or premises to be:

(1)(A) A public nuisance as defined by §§ 5-74-109, 14-54-1502, and 16-105-402; or

(B) Used for prostitution as defined by § 5-70-102.

(2) After declaring a place or premises a nuisance, the board shall make a factual determination as to the reasons why the board finds that a public nuisance exists.

(d) The sworn testimony and the board's findings shall become a part of the record.

History. Acts 2003, No. 1190, § 4.

14-54-1705. Order of abatement.

(a) If the criminal nuisance abatement board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of the place or premises to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance.

(b) The order may include, but is not limited to, the following:

(1) Prohibiting the maintenance of the nuisance;

(2) Prohibiting the operation or maintenance of the place or premises, including the closure of the place or premises or any part of the premises for a period no longer than the effective date of the order;

(3) Prohibiting the conduct, operation, or maintenance of any business or activity on the premises which is conducive to the nuisance;

(4) Ordering the eviction of tenants of the place or premises who are responsible for the criminal conduct or who allow or permit another to commit the criminal conduct;

(5) Ordering the owner of the place or premises or the owner's agents to perform criminal background checks of tenants before renting the property; or

(6) Ordering the owner to bring the place or premises into compliance with state and local safety codes before allowing the reoccupation of the property.

(c) The order must include a statement stating that violations of this order may be punishable by a fine of not more than two hundred fifty dollars ($250) for each day that violations of the order continue or that the public nuisance continues to exist.

History. Acts 2003, No. 1190, § 5.

14-54-1706. Effective date of an order.

(a) A finding or order entered pursuant to this subchapter shall become effective seven (7) calendar days after the order has been posted on the subject premises and mailed to the owner's last known address by first class mail.

(b) The order shall expire after one (1) year after the effective date or at such earlier time as is stated in the order.

(c) The order may be stayed pending appeal to circuit court pursuant to § 14-54-1707.

History. Acts 2003, No. 1190, § 6.

14-54-1707. Appeals to circuit court.

(a) Within thirty (30) days after an order or decision has been entered by the criminal nuisance abatement board according to the provisions in this subchapter, any party may appeal to a circuit court for a de novo review on the record.

(b) If an appeal is filed, the decision or order of the board shall remain in effect unless stayed by the circuit court.

History. Acts 2003, No. 1190, § 7.

14-54-1708. Violations of orders or continuations of nuisance.

(a) If an order that has been entered is violated, the criminal nuisance abatement board on its own or pursuant to a complaint may hold a hearing on whether the order has been violated or whether or not a public nuisance continues to exist.

(b) If the board finds that the public nuisance continues to exist or that the order has been violated, the board may impose a civil penalty of not more than two hundred fifty dollars ($250) for each day that the order is violated or that the nuisance continues to exist.

(c) Before such a hearing may be held, the owner must be given ten (10) calendar days' notice in writing of the hearing according to methods stated in Rule 4(d) of the Arkansas Rules of Civil Procedure.

(d) The notice must state that if the board finds that the nuisance continues to exist or that the order has been violated, the board may impose a fine of not more than two hundred fifty dollars ($250) for each day that the order has been violated or that the nuisance has continued to exist.

(e) The maximum amount of a civil penalty that may be imposed is ten thousand dollars ($10,000).

(f) In addition to a civil penalty, the board may award costs of a successful complainant not to exceed one thousand dollars ($1,000).

(g) All civil penalties imposed shall be used by the local police department for nuisance abatement purposes.

(h) Any civil penalty or costs awarded by the board may be appealed to the circuit court within thirty (30) days.

(i) Any order imposing costs or civil penalties not appealed to circuit court may be filed with the circuit clerk's office and constitutes a judgment of record and a lien against the nuisance property.

History. Acts 2003, No. 1190, § 8.

14-54-1709. Supplemental measure.

(a) This subchapter does not restrict the right of any person or government official from proceeding against a public nuisance by any other means.

(b) This subchapter is supplemental to all other laws and any other powers of a city of the first class or city of the second class.

History. Acts 2003, No. 1190, § 9.

14-54-1710. Immunity.

(a) The criminal nuisance abatement board, its individual members, and city employees assisting the board are immune from suit or action for their activities in discharge of their duties under this subchapter to the full extent of judicial immunity.

(b) Except for perjury and false swearing, complainants and witnesses are absolutely immune from suit or action for all communications with the board and all statements made within the nuisance abatement process.

History. Acts 2003, No. 1190, § 10.

CHAPTER 55

ORDINANCES OF MUNICIPALITIES

SUBCHAPTER.

2. Procedures for Adoption.
5. Prescribing of Penalties.
6. Enforcement and Remedies.

Subchapter 1 — General Provisions

14-55-102. Purposes generally.

CASE NOTES

Analysis

Health.
Safety.

Health.

A town has the authority to legislate for the protection of public health. Phillips v. Town of Oak Grove, 333 Ark. 183, 968

S.W.2d 600 (1998).

Safety.

In light of the devastation caused by a tornado, the city had the authority to adopt an ordinance which added new requirements for the construction and anchoring of manufactured homes. Smith v. City of Arkadelphia, 336 Ark. 42, 984 S.W.2d 392 (1999).

Subchapter 2 — Procedures for Adoption

SECTION.
14-55-203. Voting requirements for passage — Effective dates.
14-55-206. Publishing or posting requirements.
SECTION.
14-55-207. Adoption of technical codes by reference.

Effective Dates. Acts 2005, No. 1552, § 2: Apr. 5, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws concerning the effective dates of local ordinances are in need of immediate clarification; that the orderly administration of cities requires certainty in the application of local laws; and that this act is necessary to ensure that local residents and city administration have clear direction in the applicability and effective dates of local ordinances. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-55-201. Only one subject.

CASE NOTES

Zoning Ordinances.

The court would reject the contention that a zoning ordinance dealt with multiple subjects as it regulated both landscaping and signage; the ordinance only dealt with one subject, that is, the zoning rules for a newly constructed portion of a road. Craft v. City of Fort Smith, 335 Ark. 417, 984 S.W.2d 22 (1998).

14-55-203. Voting requirements for passage — Effective dates.

(a) On the passage of every bylaw, ordinance, resolution, or order to enter into a contract by the council of any municipal corporation, the yeas and nays shall be called and recorded.

(b) To pass any bylaw, ordinance, resolution, or order, a concurrence of a majority of a whole number of members elected to the council shall be required.

(c)(1)(A) The effective dates for ordinances of a general or permanent nature and other local measures of a general or permanent nature of cities of the first class, cities of the second class, and incorporated towns shall be upon publication or posting as is otherwise required by law, but not before ninety-one (91) days after passage by the governing body of the city or town.

(B) In the event that the governing body of the city or town has by ordinance fixed the deadline for filing referendum petitions upon ordinances or other local measures at not less than thirty (30) days nor more than ninety (90) days after passage of an ordinance or measure, then the effective date shall be the day next following the deadline fixed in the ordinance.

(C) An ordinance containing an emergency clause shall go into effect immediately upon passage or at the time specified by the emergency clause, regardless of publication or posting, but an emergency clause shall not be effective to impose any fine, penalty, forfeiture, or deprivation of liberty or property until after the ordinance has been published or posted as is otherwise required by law.

(2) The effective date of an ordinance that is not of a general or permanent nature of a city of the first class, city of the second class, or incorporated town is the date of passage of the ordinance unless a later effective date is provided in the ordinance.

History. Acts 1875, No. 1, § 29, p. 1; C. & M. Dig., § 7528; Pope's Dig., § 9588; A.S.A. 1947, § 19-2403; Acts 2001, No. 1187, § 1; 2005, No. 1552, § 1.

14-55-206. Publishing or posting requirements.

(a)(1)(A) All bylaws or ordinances of a general or permanent nature and all those imposing any fine, penalty, or forfeiture shall be published in some newspaper published in the municipality.

(B) In municipalities in which no newspaper is published, written or printed notice posted in five (5) of the most public places designated by the governing body in an ordinance or minutes of the governing body shall be deemed a sufficient publication of any law or ordinance.

(2) It shall be deemed a sufficient defense to any suit or prosecution of such fine, penalty, or forfeiture to show that no notice was given as provided herein.

(b) As to ordinances establishing rules and regulations for zoning, construction of buildings, the installation of plumbing, the installation of electric wiring, or other similar work, where such rules and regulations have been printed as a code in book form, the code or provisions thereof may be published by the municipality by reference to title of the code without further publication or posting thereof. However, no fewer than three (3) copies of the code shall be filed for use and examination by the public in the office of the clerk or recorder of the municipality after the adoption thereof if there is no electronic form of the code available for examination by the public.

History. Acts 1949, No. 36, § 1; A.S.A. 1947, § 19-2404; Acts 1993, No. 295, § 2; 2009, No. 25, § 1.

Amendments. The 2009 amendment in (b) added "if there is no electronic form of the code available for examination by the public" and made a minor stylistic change.

14-55-207. Adoption of technical codes by reference.

(a) Every municipality in the State of Arkansas is authorized by the passage of a municipal ordinance to adopt by reference technical codes, regulations, or standards, without setting forth the provisions of the code or parts thereof, if three (3) copies of the code, or the pertinent parts thereof, and any related documents are filed either electronically or by hard copy in the office of the clerk of the municipality for inspection and view by the public before the passage of the ordinance.

(b) The term "technical codes" shall include any building, zoning, health, electrical, or plumbing codes, and the term "regulations" shall include any criminal code of the State of Arkansas.

(c) It is the duty of the municipality to give a notice to the public, by publication in a paper of general circulation within the municipality, stating that copies of the code, or the pertinent parts thereof, and the related documents are open to public examination either electronically or by hard copy before the passage of the ordinance adopting the code.

History. Acts 1949, No. 267, §§ 1-3; A.S.A. 1947, §§ 19-2421 — 19-2423; Acts 2009, No. 25, § 2.

Amendments. The 2009 amendment inserted "either electronically or by hard copy" in (a) and (c); and made minor stylistic changes.

Subchapter 5 — Prescribing of Penalties

SECTION.
14-55-504. Maximum penalties permitted.

14-55-504. Maximum penalties permitted.

(a)(1) Municipal corporations shall not have power to inflict any fine or penalty, by ordinance or otherwise, to a greater sum than one thousand dollars ($1,000) for any one (1) specified offense or violation of a bylaw or ordinance, or double that sum for each repetition of such offense or violation.

(2) If a thing prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof, in violation of the bylaw or ordinance, shall not exceed five hundred dollars ($500) for each day that it is unlawfully continued.

(b) If any bylaw or ordinance provides for any greater fine, penalty, or forfeiture than is provided in this section, it shall and may be lawful, in any suit or prosecution for the recovery thereof, to reduce it to such amount as shall be deemed reasonable and proper and to permit a recovery or render a judgment for such amount as authorized.

History. Acts 1875, No. 1, § 24, p. 1; C. & M. Dig., §§ 7557, 7558; Pope's Dig., §§ 9631, 9632; Acts 1975, No. 548, § 1; A.S.A. 1947, § 19-2409; Acts 2009, No. 341, § 1.

Amendments. The 2009 amendment substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500)" in (a)(1), substituted "five hundred dollars ($500)" for "two hundred fifty dollars ($250)" in (a)(2), and made a minor stylistic change.

Subchapter 6 — Enforcement and Remedies

SECTION.

14-55-601. Power to enforce generally.
14-55-606. Additional remedies of cities of the first class.

Effective Dates. Acts 2007, No. 663, § 56: Jan. 1, 2012.

14-55-601. Power to enforce generally.

(a) Bylaws and ordinances of municipal corporations may be enforced by the imposition of fines, forfeitures, and penalties on any person offending against or violating them.

(b)(1) The fine, penalty, or forfeiture may be prescribed in each particular bylaw or ordinance or by a general bylaw or ordinance made for that purpose.

(2) Municipal corporations shall have power to provide in like manner for the prosecution, recovery, and collection of the fines, penalties, and forfeitures.

(c) Except for moving traffic violations, it is proper service for a code enforcement officer to send a citation to a person charged with a violation of a municipal code, ordinance, or regulation to that person's last known place of residence by certified mail, return receipt requested, and delivery restricted to the addressee.

History. Acts 1875, No. 1, § 23, p. 1; C. & M. Dig., § 7495; Pope's Dig., § 9544; A.S.A. 1947, § 19-2408; Acts 2009, No. 556, § 1.

Amendments. The 2009 amendment added (c).

CASE NOTES

Cited: Jarrett v. City of Marvell, 69 Ark. App. 98, 9 S.W.3d 574 (2000).

14-55-602. Imprisonment to enforce fine.

CASE NOTES

Constitutionality.

Because the city resident offered no evidence to support his contention that the city's garbage collection ordinance had been discriminatorily applied, he did not meet his burden of proving that the ordinance was unconstitutional as a result of its selective application to him. Jarrett v. City of Marvell, 69 Ark. App. 98, 9 S.W.3d 574 (2000).

14-55-606. Additional remedies of cities of the first class.

(a)(1) In all cases of violation of any of its ordinances, any city of the first class in addition to any other mode provided by law shall have the right to recover in a civil action the amount of the lowest penalty or fines provided in the ordinance for each violation or, where the offense is in its nature continuous in respect to time, for each day's violation thereof, and also the amount of any license which the person guilty of the violations was required by any such ordinance to take out.

(2) The district court shall have jurisdiction in all such actions.

(b) In all cases where a fine may have been imposed by the district court, that court in addition to the power of enforcing payment of the fine by imprisonment shall have full power to issue an execution or writ of garnishment to be executed by the chief of police.

History. Acts 1885, No. 67, § 5, p. 92; C. & M. Dig., § 7735; Pope's Dig., § 9931; A.S.A. 1947, § 19-2419; Acts 2003, No. 1185, § 35.

14-55-608. Disposition of fines. [Repealed effective January 1, 2012].

Publisher's Notes. This section, concerning disposition of fines, is repealed by Acts 2007, No. 663, § 20, effective January 1, 2012.

Effective Dates. Acts 2007, No. 663, § 56, as amended by Acts 2009, No. 345, § 7, provided:

"(a) Sections 2 through 15 of this act are effective January 1, 2008.

"(b) Sections 16 through 50 and 52 through 55 of this act are effective January 1, 2012.

"(c) Section 51 of Act 663 of 2007 is effective January 1, 2012, except:

"(1) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-933, establishing the Cleburne County District Court and departments of that court, codified as § 16-17-936 is effective July 1, 2009; and

"(2) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-950, establishing the St. Francis County District Court and departments of that court, codified as § 16-17-954 is effective July 1, 2009."

CHAPTER 56

MUNICIPAL BUILDING AND ZONING REGULATIONS — PLANNING

SUBCHAPTER.

1. General Provisions.
2. Building Regulations.

SUBCHAPTER
3. ZONING REGULATIONS.
4. MUNICIPAL PLANNING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
14-56-102. Legally erected outdoor advertising sign.
SECTION.
14-56-103. Development impact fees.

Effective Dates. Acts 2007, No. 310, § 2 provides: "Retroactive Effect. This act shall be applied retroactively to July 16, 2003. Any municipality or municipal service agency that, on or after July 16, 2003, collected a utility hookup fee or access fee that fits the definition of development impact fee as defined in § 14-56-103(a)(3) shall refund any portion of the fee or fees that were not levied for making the physical connection for utility services or to recover the construction costs of the line to which the connection is made."

14-56-102. Legally erected outdoor advertising sign.

Section 14-56-101 et seq., § 14-56-201 et seq., § 14-56-301 et seq., § 14-56-401 et seq., § 14-56-501 et seq., and § 14-56-601 et seq. shall not be construed to authorize the legislative body of any city, incorporated town, or county to adopt any ordinance, law, or regulation that requires the taking, elimination, alteration, or diminishment of a legally erected outdoor advertising sign without first making the payment of just monetary compensation therefor.

History. Acts 2003, No. 1268, § 1.

14-56-103. Development impact fees.

(a) As used in this section:

(1) "Capital plan" means a description of new public facilities or of new capital improvements to existing public facilities or of previous capital improvements to public facilities that continue to provide capacity available for new development that includes cost estimates and capacity available to serve new development;

(2) "Development" means any residential, multifamily, commercial, or industrial improvement to lands within a municipality or within a municipal service agency's area of service;

(3)(A) "Development impact fee" means a fee or charge imposed by a municipality or by a municipal service agency upon or against a development in order to generate revenue for funding or for recouping expenditures of the municipality or municipal service agency that are reasonably attributable to the use and occupancy of the development. A fee or charge imposed for this purpose is a "development impact fee" regardless of what the fee or charge is named.

(B) "Development impact fee" shall not include:

(i) Any ad valorem real property taxes;

(ii) Any special assessments for an improvement district;

(iii) Any fee for making the physical connection for utility services or any fee to recover the construction costs of the line to which the connection is made;

(iv) Any fees for filing development plats or plans for building permits or for construction permits assessed by a municipality or a municipal service that are approximately equal to the cost of the plat, plan, or permit review process to the municipality or the municipal service agency; or

(v) Any fee paid according to a written agreement between a municipality or municipal service agency and a developer for payment of improvements contained within the agreement;

(4) "Municipality" means:

(A) A city of the first class;

(B) A city of the second class; or

(C) An incorporated town;

(5) "Municipal service agency" means:

(A) Any department, commission, utility, or agency of a municipality, including any municipally owned or controlled corporation;

(B) Any municipal improvement district, consolidated public or municipal utility system improvement district, or municipally owned nonprofit corporation that owns or operates any utility service;

(C) Any municipal water department, waterworks or joint waterworks, or a consolidated waterworks system operating under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;

(D) Any municipal wastewater utility or department;

(E) Any municipal public facilities board; or

(F) Any of these municipal entities operating with another similar entity under an interlocal agreement in accordance with the Interlocal Corporation Act, § 25-20-101 et seq. or § 25-20-201 et seq.;

(6) "Ordinance" means a municipal impact fee ordinance of a municipality or an authorizing rate resolution by a board of commissioners of a consolidated waterworks system authorized to set rates for its customers under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq.; and

(7) "Public facilities" means publicly owned facilities that are one (1) or more of the following systems or a portion of those systems:

(A) Water supply, treatment, and distribution for either domestic water or for suppression of fires;

(B) Wastewater treatment and sanitary sewerage;

(C) Storm water drainage;

(D) Roads, streets, sidewalks, highways, and public transportation;

(E) Library;

(F) Parks, open space, and recreation areas;

(G) Police or public safety;

(H) Fire protection; and

(I) Ambulance or emergency medical transportation and response.

(b) A municipality or a municipal service agency may assess by ordinance a development impact fee to offset costs to the municipality or to a municipal service agency that are reasonably attributable to providing necessary public facilities to new development.

(c)(1) A municipality or municipal service agency may assess, collect, and expend development impact fees only for the planning, design, and construction of new public facilities or of capital improvements to existing public facilities that expand its capacity or for the recoupment of prior capital improvements to public facilities that created capacity available to serve new development.

(2) The development impact fee may be pledged to the payment of bonds issued by the municipality or municipal service agency to finance capital improvements or public facilities for which the development impact fee may be imposed.

(3) No development impact fee shall be assessed for or expended upon the operation or maintenance of any public facility or for the construction or improvement of public facilities that does not create additional capacity.

(d)(1) A municipality or a municipal service agency may assess and collect impact fees only from new development and only against a particular new development in reasonable proportion to the demand for additional capacity in public facilities that is reasonably attributable to the use and occupancy of that new development.

(2) The owner, resident, or tenant of a property that was assessed an impact fee and paid it in full shall have the right to make reasonable use of all public facilities that were financed by the impact fee.

(e)(1) A municipality or municipal service agency may assess, collect, and expend impact fees only under a development impact fee ordinance adopted and amended under this section.

(2) A development impact fee ordinance shall be adopted or amended by the governing body of a municipality or municipal service agency only after the municipality or municipal service agency has adopted a capital plan and level of service standards for all of the public facilities that are to be so financed.

(3) The development impact fee ordinance shall contain:

(A) A statement of the new public facilities and capital improvements to existing public facilities that are to be financed by impact fees and the level of service standards included in the capital plan for the public facilities that are to be financed with impact fees;

(B) The actual formula or formulas for assessing the impact fee, which shall be consistent with the level of service standards;

(C) The procedure by which impact fees are to be assessed and collected; and

(D) The procedure for refund of excess impact fees in accordance with subsection (h) of this section.

(f)(1) The municipality or municipal service agency shall collect the development impact fee at the time and manner and from the party as

prescribed in the ordinance and shall collect the fee separate and apart from any other charges to the development.

(2)(A) A development impact fee shall be collected at either the closing on the property by the owner or the issuance of a certificate of occupancy by the municipality.

(B) However, a municipal water or wastewater department, waterworks, joint waterworks, or consolidated waterworks system operating under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq., may collect a development impact fee in connection with and as a condition to the installation of the water meter serving the property.

(3) At closing, the development impact fee that has been paid or will be paid for the property shall be separately enumerated on the closing statement.

(4) The ordinance may include that the development impact fee may be paid in installments at a reasonable interest rate for a fixed number of years or that the municipality or municipal service agency may negotiate agreements with the owner of the property as to the time and method of paying the impact fee.

(g)(1) The funds collected under a development impact fee ordinance shall be deposited into a special interest-bearing account.

(2) The interest earned on the moneys in the separate account shall be credited to the special fund and the funds deposited into the special account and the interest earned shall be expended only in accordance with this section.

(3) No other revenues or funds shall be deposited into the special account.

(h)(1) The municipality or municipal service agency shall refund the portion of collected development impact fees, including the accrued interest, that has not been expended seven (7) years from the date the fees were paid.

(2)(A) A refund shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.

(B) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property no later than thirty (30) days after the date on which the refund becomes due.

(C) The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

(3)(A) The refund shall be made on a pro rata basis and shall be paid in full not later than ninety (90) days after the date certain upon which the refund becomes due.

(B) If the municipality or municipal service agency does not pay a refund in full within the period set in subdivision (h)(3)(A) of this section to any person entitled to a refund, that person shall have a cause of action against the municipality for the refund or the unpaid

portion in the circuit court of the county in which the property is located.

(i)(1)(A) On and after July 16, 2003, a municipality or municipal service agency shall levy and collect a development impact fee only if levied and collected under ordinances enacted in compliance with this section.

(B) Beginning January 1, 2004, a municipality or municipal service agency shall collect development impact fees under ordinances enacted before July 16, 2003, or under ordinances amended after July 16, 2003, only if collected in compliance with subsections (f)-(h) of this section.

(2) However, except for the compliance with the collection requirements under subsections (f)-(h) of this section, this section does not invalidate any development impact fee or a similar fee adopted by a municipality or municipal service agency before July 16, 2003, nor does this section apply to funds collected under any development impact fee or similar fee adopted July 16, 2003.

(3) In addition, a municipality with a park land or green space ordinance that has been in existence for ten (10) years on July 16, 2003, and any amendments to the ordinance, which allows the option to pay a fee or to dedicate green space or park land in lieu of a fee, may continue to be administered under the existing ordinance.

History. Acts 2003, No. 1719, § 1; 2007, No. 310, § 1.

A.C.R.C. Notes. Acts 2007, No. 310, § 2, provided: "Retroactive Effect. This act shall be applied retroactively to July 16, 2003. Any municipality or municipal service agency that, on or after July 16, 2003, collected a utility hookup fee or access fee that fits the definition of development impact fee as defined in § 14-56-103(a)(3) shall refund any portion of the fee or fees that were not levied for making the physical connection for utility services or to recover the construction costs of the line to which the connection is made."

Amendments. The 2007 amendment, in (a)(3), added the last sentence in (A), rewrote (B)(iii), and added (B)(v).

Subchapter 2 — Building Regulations

SECTION.

14-56-202. Additional powers of cities of the first class.

14-56-201. Authority generally.

CASE NOTES

Analysis

Billboards.
Erection, Construction, Etc.

Billboards.

Motion to dismiss for failure to state a claim was improperly granted because a complaint filed by a lessor and a lessee sufficiently alleged that their rights or other legal relations were affected by Avoca, Ark., Ordinance No. 69 where a town was making demands regarding the removal of billboards; therefore, the lessor and the lessee were entitled to declaratory relief under § 16-111-104. They were arguing that the town lacked power to regulate the billboards at issue. Statewide

Outdoor Adver., LLC v. Town of Avoca, 104 Ark. App. 10, 289 S.W.3d 111 (2008).

Erection, Construction, Etc.

In light of the devastation caused by a tornado, the city had the authority to adopt an ordinance which added new requirements for the construction and anchoring of manufactured homes. Smith v. City of Arkadelphia, 336 Ark. 42, 984 S.W.2d 392 (1999).

14-56-202. Additional powers of cities of the first class.

(a)(1) The following enlarged and additional powers are conferred upon cities of the first class.

(2) They shall have the power to:

(A) Regulate the building of houses;

(B) Provide that no house or structure shall be erected within the city limits except upon a permit to be issued by such officer as the city council shall designate; and

(C) Provide that no permit shall be issued for the building of any house or structure deemed to be unsafe, unsanitary, obnoxious, or detrimental to the public welfare.

(b) However, the authority to appoint and remove department heads, including the building official, shall be governed by § 14-42-110 regardless of the classification of the city or town.

History. Acts 1907, No. 352, § 1, p. 842; C. & M. Dig., § 7754; Pope's Dig., § 10053; A.S.A. 1947, § 19-2802; Acts 2005, No. 943, § 1.

CASE NOTES

Billboards.

Motion to dismiss for failure to state a claim was improperly granted because a complaint filed by a lessor and a lessee sufficiently alleged that their rights or other legal relations were affected by Avoca, Ark., Ordinance No. 69 where a town was making demands regarding the removal of billboards; therefore, the lessor and the lessee were entitled to declaratory relief under § 16-111-104. They were arguing that the town lacked power to regulate the billboards at issue. Statewide Outdoor Adver., LLC v. Town of Avoca, 104 Ark. App. 10, 289 S.W.3d 111 (2008).

14-56-203. Removal or razing of buildings.

CASE NOTES

Authority.

Summary judgment was properly awarded to a city on a property owner's petition for an injunction to prevent the city from razing the owner's house because the city had the authority under the statute to determine that the house was a nuisance; the city had the authority given by statute to raze buildings that were detrimental to the public welfare. Kearney v. City of Little Rock, 2009 Ark. App. 125, 302 S.W.3d 629 (2009).

Subchapter 3 — Zoning Regulations

SECTION.

14-56-306. Land use in adjacent and contiguous cities to be compatible.

Effective Dates. Acts 2001, No. 1198, § 2: Mar. 30, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly of the State of Arkansas that Act 779 of 1999 created many situations whereby municipal boundary areas were changed rapidly and the proper coordination of land use regulations between municipal jurisdictions is nearly impossible; that urban areas of northwest Arkansas are developing rapidly and creating conflicts between the land uses in different municipalities growing into one another; that situations where zoning regulations create incompatible land uses are a hardship on property owners in these boundary areas; and that this act should have immediate effect to prevent any further undue burden on those landowners. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-56-306. Land use in adjacent and contiguous cities to be compatible.

(a) If municipalities become adjacent and contiguous to one another through annexation or other procedures, then lands or properties within the boundary area of each municipality shall be zoned only for land uses which are compatible with the zoned land uses of the adjoining lands or properties, even if the adjoining lands or properties are located outside the corporate limits or are located within the corporate limits of another municipality.

(b) Adjoining lands within the boundary area shall remain zoned with a compatible land use until the governing body of each municipality which is adjacent and contiguous to the boundary area adopts a resolution agreeing to a change in the zoning of the lands or properties that adjoin one another and stating that the rezoning to a land use which is not compatible will not adversely impact the adjoined land or property.

(c) As used in this section, unless the context otherwise requires:

(1) "Adjacent and contiguous" means any time the corporate limits of one municipality come in contact with the boundaries of the corporate limits of another municipality, or if the boundaries of one municipality extend to within one thousand feet (1000') of the corporate limits of another municipality;

(2) "Boundary area" means the area of land along the municipal boundary that is:

(A) Inside the municipality and within one thousand feet (1000') of the municipality's corporate boundary that is adjacent and contiguous to another municipality; and

(B) Outside the municipality, but within the planning and zoning jurisdiction of the municipality and also within one thousand feet (1000') of the municipality's corporate boundary that is adjacent and contiguous to another municipality;

(3)(A) "Compatible land use" means any use of lands, buildings, and structures which is harmonious to the uses and activities being conducted on the adjoining lands and properties and which does not adversely affect or unreasonably impact any use or enjoyment of the adjoined land.

(B) A compatible land use includes a land use authorized by the municipal zoning ordinance for the zone that is the equivalent to, or that is as nearly equivalent as possible to, a land use authorized by the municipal zoning ordinance; and

(4) "Municipality" means:

(A) A city of the first class;

(B) A city of the second class; or

(C) An incorporated town.

(d) This section shall apply to municipalities with planning commissions and zoning ordinances authorized under §§ 14-56-401 — 14-56-425 and shall apply to any other municipal zoning regulations authorized by Arkansas law.

(e) Notwithstanding anything contained in subsections (a)-(d) of this section, this section shall not apply to any property if the owners of the property have sought to have services extended to the property pursuant to § 14-40-2002 prior to March 30, 2001.

History. Acts 2001, No. 1198, § 1.

Subchapter 4 — Municipal Planning

SECTION.
14-56-404. Planning commission created.
14-56-405. Appointment of members.
14-56-406. Commission officers.
14-56-413. Territorial jurisdiction.
14-56-417. Regulations to control development of land.
14-56-422. Adoption of plans, ordinances, and regulations.
14-56-426. Control of property use — Proximity to military installation.

14-56-402. Authority generally.

CASE NOTES

Nature of Authority.

By enacting the ordinance in question, the board approved the recommended action and amended a prior ordinance, but it rezoned the subject property and added new conditions to accommodate the rezoning and, thus, the board took legislative action delegated to it under this section; because the action was not administrative, the landowners who challenged the ordinance were not required to proceed under § 14-56-425 and the trial court had subject matter jurisdiction. Summit Mall Co. v. Lemond, 355 Ark. 190, 132 S.W.3d 725 (2003).

14-56-403. Purpose of plans.

CASE NOTES

Cited: Brock v. Townsell, 2009 Ark. 224, 309 S.W.3d 179 (2009).

14-56-404. Planning commission created.

(a)(1) The legislative body of the municipality may create a planning commission of not less than five (5) members, of whom at least two-thirds (⅔) shall not hold any other municipal office or appointment except membership in the board of adjustment or a joint planning agency.

(2) A city of the second class or an incorporated town may elect by ordinance to allow the city council to serve as the planning commission and board of adjustment under this subchapter.

(b) The legislative body may confer on the commission the powers necessary to carry out the municipal plan.

History. Acts 1957, No. 186, § 1; 1963, No. 36, § 1; A.S.A. 1947, § 19-2825; Acts 2011, No. 280, § 1.

Amendments. The 2011 amendment added the (a)(1) designation and (a)(2).

14-56-405. Appointment of members.

(a) Appointment and terms of the members of the planning commission shall be as provided by city ordinance.

(b) The legislative body of the municipality may appoint one-third (⅓) of the membership of the commission from electors living outside the corporate limits of the municipality but within the recorded planning jurisdiction of the municipality.

History. Acts 1957, No. 186, § 2; A.S.A. 1947, § 19-2826; Acts 2005, No. 901, § 1.

14-56-406. Commission officers.

(a)(1) The planning commission shall designate one (1) of its members as chair and select a vice chair and such other officers as it may require.

(2) The mayor shall serve as the chair of the planning commission if the city council is operating as the planning commission and board of adjustment under § 14-56-404(a)(2).

(b) The terms of office of the chair and other officers of the commission shall be as provided by the rules of the planning commission.

History. Acts 1957, No. 186, § 2; A.S.A. 1947, § 19-2826; Acts 2011, No. 280, § 2.

Amendments. The 2011 amendment added (a)(2); and substituted "chair" for "chairman" throughout the section.

14-56-413. Territorial jurisdiction.

(a)(1)(A) The territorial jurisdiction of the legislative body of a city of the first class, a city of the second class, or an incorporated town , for the purpose of this subchapter, shall be exclusive and shall include all land lying within five (5) miles of the corporate limits.

(B) If the corporate limits of two (2) or more municipalities are less than ten (10) miles apart, the limits of their respective territorial jurisdictions shall be a line equidistant between them, or as agreed on by the respective municipalities.

(2)(A) In addition to the powers under this subchapter, cities now having eight thousand (8,000) population or more and situated on navigable streams shall have the authority to administer and enforce zoning ordinances outside their corporate limits as follows:

(i) For cities of eight thousand (8,000) to fifty thousand (50,000) population, the jurisdictional area will be one (1) mile beyond the corporate limits;

(ii) For cities of fifty thousand (50,000) to one hundred fifty thousand (150,000) population, the jurisdictional area will be two (2) miles beyond the corporate limits;

(iii)*(a)* For cities of one hundred fifty thousand (150,000) population and over, the jurisdictional area will be three (3) miles beyond the corporate limits.

(b) Upon July 3, 1989, no city with a population in excess of one hundred fifty thousand (150,000) persons and which is situated on a navigable stream shall exercise any zoning authority outside the boundaries of the county wherein it is located without the approval of the quorum court of the county wherein the city is not located and the approval of the governing bodies of all other cities having zoning authority over the area.

(B) The city populations will be based on the latest available United States census data.

(C) The provisions of subdivision (a)(2) of this section shall not restrict the powers of any city currently exercising the authority authorized under this subdivision.

(b)(1) The planning commission shall designate the area within the territorial jurisdiction for which it will prepare plans, ordinances, and regulations.

(2) A description of the boundaries of the area shall be filed with the city clerk and with the county recorder.

History. Acts 1957, No. 186, §§ 3, 5; 1965, No. 134, § 1; 1965, No. 138, § 1; A.S.A. 1947, §§ 19-2827, 19-2829; Acts 1987, No. 56, §§ 1, 4; 1989, No. 94, § 1; 2011, No. 280, § 3.

Amendments. The 2011 amendment substituted "a city of the first class, a city of the second class, or an incorporated town" for "the city having a planning commission" in (a)(1)(A); deleted "of the first or second class" following "municipalities" in (a)(1)(B); and, in (a)(2)(A), added "In addition to the powers under this subchapter" and deleted "planning and" following "enforce."

CASE NOTES

Analysis

In General.
Annexation.
Regulation of Land Use.

In General.

Because the Arkansas Soil and Water Conservation Commission acted within its statutory authority under § 15-22-503(e) in approving a water project submitted by a municipality that included a portion of a neighboring city's five-mile extraterritorial planning area, which was not preempted under this section by the neighboring municipality's planning authority in the five-mile area surrounding its city limits, and because the Commission's decision was supported by substantial evidence, the appellate court affirmed the Commission's order approving the municipality's water development project, as amended, for water plan compliance certification. Ark. Soil & Water Conservation Comm'n v. City of Bentonville, 351 Ark. 289, 92 S.W.3d 47 (2002).

There was no requirement in subdivision (b)(2) of this section that a map of a planning area be filed; thus, a city met the requirement of filing a "description of the boundaries" of the area by filing a legal description with the county clerk. Potter v. City of Tontitown, 371 Ark. 200, 264 S.W.3d 473 (2007).

Annexation.

Circuit court properly upheld the annexation of four tracts of real property totaling approximately 1,951 acres into the City of Sherwood, Arkansas because the City of Jacksonville's plans for the area were not superior to, and did not defeat, the landowners' right to petition for annexation to another city. City of Jacksonville v. City of Sherwood, 375 Ark. 107, 289 S.W.3d 90 (2008).

Regulation of Land Use.

Delegation of authority to regulate land use on property outside the city limits but within the city's extraterritorial-planning jurisdiction was permitted under this section, but approval of a subdivision application was unlawful due to the city's failure to prove that the necessary documents had been submitted. McLain v. City of Little Rock Planning Comm'n, 2011 Ark. App. 285, — S.W.3d — (2011).

Cited: City of Fort Smith v. Didicom Towers, Inc., 362 Ark. 469, 209 S.W.3d 344 (2005); City of Dover v. City of Russellville, 363 Ark. 458, 215 S.W.3d 623 (2005).

14-56-414. Preparation of plans.

CASE NOTES

Cited: McLain v. City of Little Rock Planning Comm'n, 2011 Ark. App. 285, — S.W.3d — (2011).

14-56-415. Plan recommendations.

CASE NOTES

Cited: McLain v. City of Little Rock Planning Comm'n, 2011 Ark. App. 285, — S.W.3d — (2011).

14-56-416. Zoning ordinance.

CASE NOTES

Analysis

In General.
Nonconforming Uses.
Procedure.

In General.

This section applies only to zoning laws that affect an entire city and, therefore, did not apply to an ordinance which dealt only with a small portion of a city. Craft v. City of Fort Smith, 335 Ark. 417, 984 S.W.2d 22 (1998).

Nonconforming Uses.

Conway, Ark., Ordinance 0-94-54 may be read harmoniously with § 20-17-903; municipalities that had passed a relevant zoning ordinance in accordance with this section could regulate the construction and expansion of cemeteries pursuant to the ordinance, and municipalities that had not done so had only the benefit of §§ 20-17-903, 14-54-802, and 14-54-803, such that the city's denial of the landowner's request for a conditional-use-permit precluded the establishment of a cemetery on his property. Brock v. Townsell, 2009 Ark. 224, 309 S.W.3d 179 (2009).

Procedure.

When property owners and builder requested a writ of mandamus in circuit court, challenging a city's stop-work order on a building permit issued to the builder to construct a garage, the circuit court lacked jurisdiction as the builder and property owners prematurely circumvented the appellate process by filing a writ of mandamus prior to the board of zoning adjustment's reaching a final decision on the matter. Douglas v. City of Cabot, 347 Ark. 1, 59 S.W.3d 430 (2001).

Cited: City of Fort Smith v. Didicom Towers, Inc., 362 Ark. 469, 209 S.W.3d 344 (2005); Talley v. City of N. Little Rock, 2009 Ark. 601, — S.W.3d — (2009).

14-56-417. Regulations to control development of land.

(a)(1) Following adoption and filing of a master street plan, the planning commission may prepare and shall administer, after approval of the legislative body, regulations controlling the development of land.

(2) The development of land includes, but is not limited to:

(A) The provision of access to lots and parcels;

(B) The extension or provision of utilities;

(C) The subdividing of land into lots and blocks; and

(D) The parceling of land resulting in the need for access and utilities.

(b)(1) The regulations controlling the development of land may establish or provide for the minimum requirements as to:

(A) Information to be included on the plat filed for record;

(B) The design and layout of the subdivision, including standards for lots and blocks, street rights-of-way, street and utility grades, consideration of school district boundaries, and other similar items; and

(C) The standards for improvements to be installed by the developer at his or her own expense such as:

(i) Street grading and paving;

(ii) Curbs, gutters, and sidewalks;

(iii) Water, storm, and sewer mains;

(iv) Street lighting; and

(v) Other amenities.

(2)(A) The regulations may permit the developer to post a performance bond in lieu of actual installation of required improvements before plat approval.

(B) They may provide for the dedication of all rights-of-way to the public.

(3)(A) The regulations may govern lot or parcel splits, which is the dividing of an existing lot or parcel into two (2) or more lots or parcels.

(B) No deed or other instrument of transfer shall be accepted by the county recorder for record unless the deed or other instrument of transfer is to a lot or parcel platted and on file or accompanied with a plat approved by the commission.

(4) The regulations shall establish the procedure to be followed to secure plat approval by the commission.

(5)(A) The regulations shall require the developer to conform to the plan currently in effect.

(B)(i) The regulations may require the reservation for future public acquisition of land for community or public facilities indicated in the plan.

(ii) This reservation may extend over a period of not more than one (1) year from the time the public body responsible for the acquisition of reserved land is notified of the developer's intent.

(6) When a proposed subdivision does not provide areas for a community or public facility based on the plans in effect, the regulations may provide for reasonable dedication of land for such public or community facilities or for a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition of facilities that serve the subdivision.

(c) Within the area within which the municipality intends to exercise its territorial jurisdiction as indicated on the planning area map, the county recorder shall not accept any plat for record without the approval of the planning commission.

History. Acts 1957, No. 186, § 5; 1965, No. 134, § 1; A.S.A. 1947, § 19-2829; Acts 2005, No. 2144, § 4.

CASE NOTES

Cited: McLain v. City of Little Rock Planning Comm'n, 2011 Ark. App. 285, — S.W.3d — (2011).

14-56-422. Adoption of plans, ordinances, and regulations.

All plans, recommended ordinances, and regulations shall be adopted through the following procedure:

(1)(A) The planning commission shall hold a public hearing on the plans, ordinances, and regulations proposed under this subchapter.

(B) Notice of public hearing shall be published in a newspaper of general circulation in the city at least one (1) time fifteen (15) days prior to the hearing.

(C) Notice by first class mail to the boards of directors of all school districts affected by a proposed plan, ordinance, or regulation shall be provided sufficiently in advance to allow representatives of all affected school districts a reasonable opportunity to submit comments on any proposed plan, ordinance, or regulation.

(2) Following the public hearing, proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented or in modified form by a majority vote of the entire commission.

(3) Following its adoption of plans and recommendation of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the legislative body of the city for its adoption.

(4) The legislative body of the city may return the plans and recommended ordinances and regulations to the commission for further study or recertification or by a majority vote of the entire membership may adopt by ordinance or resolution the plans and recommended ordinances or regulations submitted by the commission. However, nothing in this subchapter shall be construed to limit the city council's authority to recall the ordinances and resolutions by a vote of a majority of the council.

(5) Following adoption by the legislative body, the adopted plans, ordinances, and regulations shall be filed in the office of the city clerk. The city clerk shall file the plans, ordinances, and regulations as pertain to the territory beyond the corporate limits with the county recorder of the counties in which territorial jurisdiction is being exercised.

History. Acts 1957, No. 186, § 6; 1959, No. 128, § 1; A.S.A. 1947, § 19-2830; Acts 2005, No. 2144, § 5.

14-56-425. Appeals to circuit court.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments: Administrative Agencies–Appellate Procedure, 59 Ark. L. Rev. 511.

Case Note, Lost in Translation: Combs v. City of Springdale, An Overview of the Ins and Outs of Appeals Procedure for Administrative Decisions by Local Governments, 61 Ark. L. Rev. 351.

U. Ark. Little Rock L. Rev. Annual Survey of Case Law: Practice, Procedure, and Courts, 29 U. Ark. Little Rock L. Rev. 905.

CASE NOTES

Analysis

Constitutionality.
Administrative Agencies.
Compliance with Court Rules.
Procedure.
Trial De Novo.
Zoning Cases.

Constitutionality.

This section is not void for vagueness, notwithstanding the contention that it fails to give adequate notice of the proper procedure for perfecting an appeal from the decision of a city planning commission, since the statute's requirements may be adequately determined by reference to a prior decision of the court. Night Clubs, Inc. v. Fort Smith Planning Comm'n, 336 Ark. 130, 984 S.W.2d 418 (1999).

Administrative Agencies.

Pursuant to this section, the city's Board of Zoning Adjustment (BZA) was an administrative agency and did not have power to legislate; the city's BZA was acting in an adjudicatory or quasi-judicial manner when it denied the owner's variance request; the statute was constitutional as it did not violate the doctrine of separation of powers, expressed in Ark. Const., Art. 4, § 2. City of Fort Smith v. McCutchen, 372 Ark. 541, 279 S.W.3d 78 (2008).

Compliance with Court Rules.

Trial court had jurisdiction to hear landowners' appeal as their affidavit was sufficient to comply with Pulaski County, Ark., Dist. Ct. R. 9(c) where the substance of the affidavit and the clerk's response made clear that the record was not available to the landowners on July 7 and would not be available until after it was transcribed and approved by the city board of directors. Nettles v. City of Little Rock, 96 Ark. App. 86, 238 S.W.3d 635 (2006).

Where the city council permitted a landowner to make curb cuts in front of his home that were contrary to the development plans' uniform design, the developers did not appeal that decision within thirty days as required by Ark. Dist. Ct. R. 9. The trial court did not have jurisdiction over their complaint and appeal filed a year later; the developers did not file either a certified copy of the city council's proceedings or an affidavit stating that they could not timely file the record. Franks v. Mt. View, 99 Ark. App. 205, 258 S.W.3d 799 (2007).

Landowner's complaint filed in circuit court was not an appeal of final action taken by the City Council, but was, instead, a complaint against the mayor based on his alleged failure to comply with a mandatory duty; therefore, this section did not apply, and the landowner was not required to comply with the directives of Ark. Dist. Ct. R. 9, and the circuit court had subject-matter jurisdiction of his claims. Brock v. Townsell, 2009 Ark. 224, 309 S.W.3d 179 (2009).

Because a construction company failed to perfect its appeal of the final decision of a city's planning commission in the time and manner provided by Ark. Dist. Ct. R. 9, the trial court did not have jurisdiction to hear it, and the commission's decision was a final action under this section since it ended the controversy and left no issues to be resolved as to the right-of-way requirement; because the decision was a final action, the company was required to comply with the directives of Rule 9 in filing an appeal, but it did not file its complaint until more than thirty days after the commission's decision, and failure to comply with the requirements of Rule 9 prevented the trial court from acquiring subject-matter jurisdiction. Ark. Constr. & Excavation, LLC v. City of Maumelle, 2009 Ark. App. 874, — S.W.3d — (2009).

Procedure.

When property owners and builder requested a writ of mandamus in circuit court, challenging a city's stop-work order on a building permit issued to the builder to construct a garage, the circuit court lacked jurisdiction as the builder and property owners prematurely circumvented the appellate process by filing a writ of mandamus prior to the board of zoning adjustment's reaching a final decision on the matter. Douglas v. City of Cabot, 347 Ark. 1, 59 S.W.3d 430 (2001).

Property owners' appeal of a trial court's order dismissing the property owners' challenge to an action taken by a city

planning commission regarding a proposed mobile home park, on the grounds that the owners' lacked standing to bring the challenge, was dismissed by the appellate court for lack of jurisdiction because the commission's action was not final for the purposes of this section; although the term "final action" is not defined in this section, the court used principles drawn from other cases dealing with different issues and determined that the commission's action was not final, as there were several issues that still needed to be considered by the commission before it took final action on the proposal. Stromwall v. City of Springdale Planning Comm'n, 350 Ark. 281, 86 S.W.3d 844 (2002).

By enacting the ordinance in question, the board approved the recommended action and amended a prior ordinance, but it rezoned the subject property and added new conditions to accommodate the rezoning, and thus the board took legislative action delegated to it under § 14-56-402; because the action was not administrative, the landowners who challenged the ordinance were not required to proceed under this section and the trial court had subject matter jurisdiction. Summit Mall Co. v. Lemond, 355 Ark. 190, 132 S.W.3d 725 (2003).

Circuit court correctly granted the motion on the pleadings as to the property owner's counts against the city and planning commission for deprivation of property as the owner's appeal, filed two years after the city's decision, was well outside the 30-day requirement and was thus untimely; because the counts had nothing to do with action by the city council, the circuit court did not have subject matter jurisdiction. Ingram v. City of Pine Bluff, 355 Ark. 129, 133 S.W.3d 382 (2003).

Developer's appeal to circuit court of city council's conditional final approval of a subdivision plat was properly dismissed for lack of subject matter jurisdiction where it was filed more than 30 days after the conditional approval was issued. Green v. City of Jacksonville, 357 Ark. 517, 182 S.W.3d 124 (2004).

Property owners' appeal of the denial of nonconforming use status was improperly dismissed because their appeal was perfected under Ark. Dist. Ct. R. 9 and this section by the timely filing of the record in circuit court; Ark. R. Civ. P. 4 did not apply because there was no requirement of service of summons and complaint for the appeal and, to the extent that Weiss v. Johnson, 331 Ark. 409, 961 S.W. 2d 28 (1998), was inconsistent, it was overruled. Wright v. City of Little Rock, 366 Ark. 96, 233 S.W.3d 644 (2006).

Trial De Novo.

Pursuant to this section, "appeals" to circuit court are not limited proceedings where the circuit court merely conducts a substantial evidence review but instead, are trials de novo. Carmical v. McAfee, 68 Ark. App. 313, 7 S.W.3d 350 (1999).

City council meeting where the council denied landowner's request to split his lots was the final decision for purposes of triggering the time limit on when to appeal under this section. Combs v. City of Springdale, 336 Ark. 31, 233 S.W.3d 130 (2006).

Rational basis circuit court review of denial of a conditional use permit for operation of a group home was improper, as an Arkansas municipality's decision granting or denying an application for conditional use under a zoning ordinance was a quasi-judicial act requiring a de novo review by the circuit court under this section. King's Ranch of Jonesboro, Inc. v. City of Jonesboro, 2011 Ark. 123, — S.W.3d — (2011).

Zoning Cases.

Because the city council's decision to deny a developer's petition to rezone land was legislative, this section did not apply and the judicial branch did not have the authority to review the decision de novo. As the city council expressed legitimate concerns about traffic and safety, the Supreme Court of Arkansas held that its zoning decision was not arbitrary, capricious, or unreasonable. PH, LLC v. City of Conway, 2009 Ark. 504, — S.W.3d — (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 807 (Dec. 3, 2009).

Although this section allowed for a jury trial in a circuit court in an appeal from a zoning board's decision, appellees also asserted a claim in equity for a private nuisance and only sought injunctive relief; thus, the circuit court erred by submitting the private nuisance claim to a jury. Ludwig v. Bella Casa, LLC, 2010 Ark. 435, — S.W.3d — (2010).

Cited: Combs v. City of Springdale, 336 Ark. 31, 233 S.W.3d 130 (2006); Talley v.

City of N. Little Rock, 2009 Ark. 601, — S.W.3d — (2009).

14-56-426. Control of property use — Proximity to military installation.

(a) Any city of the first class in this state within which there lies, in whole or in part, an active-duty United States Air Force military installation shall enact a city ordinance specifying that within five (5) miles of the corporate limits future uses on property which might be hazardous to aircraft operation shall be restricted or prohibited.

(b) The ordinance shall restrict or prohibit future uses within the five-mile area which:

(1) Release into the air any substance that would impair visibility or otherwise interfere with the operation of aircraft, i.e., steam, dust, or smoke;

(2) Produce light emissions, either direct or indirect, that are reflective and that would interfere with pilot vision;

(3) Produce electrical emissions that would interfere with aircraft communications systems or navigational equipment;

(4) Attract birds or waterfowl, including, but not limited to, the operation of sanitary landfills, maintenance of feeding stations, or the growing of certain vegetation;

(5) Provide for structures within ten feet (10') of aircraft approach, departure, or transitional surfaces; or

(6) Expose persons to noise greater than sixty-five (65) decibels.

(c) The ordinance shall restrict or prohibit future uses within the five-mile area that violate the height restriction criteria of Federal Aviation Regulation, part 77, subpart C.

(d)(1) The ordinance shall be consistent with recommendations or studies made by the United States Air Force entitled Air Installation Compatible Use Zone Study, Volumes I, II, and III, dated April 2003.

(2) Interpretations of such an ordinance shall take into account recommendations or studies with a view toward protection of the public and maintenance of safe aircraft operations.

(e) The ordinance shall not prohibit single-family residential use on tracts one (1) acre or more in area, provided that future construction shall comply with Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations, Wyle Research Report WR 89-7, which construction shall be regulated and inspected by the city's existing building permit and inspection ordinances and procedures.

History. Acts 1995, No. 530, §§ 1-5; 2005, No. 540, § 1.

CFR. Federal Aviation Regulation, part 77, subpart C, referred to in (c), is found at 14 CFR § 77.21, et seq.

CHAPTER 57

REGULATION AND TAXATION OF VEHICLES BY MUNICIPALITIES

SUBCHAPTER.
7. City or Town Vehicle Tax.

Subchapter 7 — City or Town Vehicle Tax

SECTION.
14-57-704. Special election required.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-57-704. Special election required.

(a)(1) Before the vehicle tax levied by the governing body of any city of the first class or city of the second class or incorporated town upon vehicle owners residing in the city or town may be collected, the mayor shall call a special election in accordance with § 7-11-201 et seq.

(2) This election shall be held not more than ninety (90) days from the date of the publication of the proclamation, at which the qualified electors of the city or town shall vote on the question of the levy of the tax.

(b)(1) If a majority of the qualified electors of the city or town voting on the issue shall vote for the levy of the tax at the special election, then the tax may be thereafter levied in the city or town in the manner authorized in this subchapter and it shall not be necessary that an election be called again in the city or town on the question of levying the tax.

(2) If a majority of the qualified electors of the city or town voting on the issue at the special election shall vote against the levy of the tax, then the tax shall not be levied in the city or town. However, the governing body of the city or town may propose the levy of the tax at any time after the expiration of one (1) year from the election in the city or

town, and the election thereon shall be called as provided in this section.

(c) Special elections held pursuant to this section shall be conducted in accordance with the election laws of this state, and the form of the ballot, the method of voting, and the counting, tabulation, and certification of the election results shall be in the manner provided by law.

History. Acts 1969, No. 88, § 2; A.S.A. 1947, § 19-3507; Acts 2005, No. 2145, § 39; 2007, No. 1049, § 59; 2009, No. 1480, § 77.

Amendments. The 2007 amendment rewrote (a).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a)(1).

CHAPTER 58

FISCAL AFFAIRS OF CITIES AND INCORPORATED TOWNS

SUBCHAPTER.

1. General Provisions.
2. Budgets in Mayor-Council Municipalities.
3. Cities of the First Class Generally.
10. Alternative Negotiated Purchasing for Municipalities.

Subchapter 1 — General Provisions

SECTION.

14-58-101. Audit by independent accountant.
14-58-103. Withholding of membership dues.
14-58-104. Specific purchases and contracts.

Effective Dates. Acts 2005, No. 499, § 2: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the provisions of this act are of critical importance to preserve the efficient operations of the Division of Legislative Audit and provide the flexibility needed to supply the General Assembly and the Legislative Joint Auditing Committee information vital and necessary to fulfill their constitutional and statutory mandates. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this act is immediately necessary to assist dealers that are facing possible termination of their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by

the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-58-101. Audit by independent accountant.

(a) The audit or agreed-upon procedures engagement of every municipality shall be made by the Division of Legislative Audit or other independent persons licensed and in good standing to practice accounting by the Arkansas State Board of Public Accountancy, to be selected by the governing body of the municipality.

(b) Any statutorily required audit of a municipality shall include, as a minimum, a review and comments on substantial compliance with each of the following Arkansas laws:

(1) Arkansas Municipal Accounting Law of 1973, § 14-59-101 et seq.;

(2) Arkansas District Courts and City Courts Accounting Law, § 16-10-201 et seq.;

(3) Improvement contracts, §§ 22-9-202 — 22-9-204;

(4) Budgets, purchases, and payments of claims, etc., § 14-58-201 et seq. and 14-58-301 et seq;

(5) Investment of public funds, § 19-1-501 et seq.; and

(6) Deposit of public funds, §§ 19-8-101 — 19-8-107.

(c)(1) For the purposes of this section, an audit shall be planned, conducted and the results of the work reported in accordance with generally accepted government auditing standards, if applicable.

(2)(A) The financial statements of municipalities shall be presented on a fund basis with, as a minimum:

(i) The general fund and the street fund presented separately; and

(ii) All other funds included in the audit presented in the aggregate.

(B) The financial statements shall consist of the following:

(i) A balance sheet;

(ii) A statement of revenues (receipts), expenditures (disbursements), and changes in fund equity (balances);

(iii) A comparison of the final adopted budget to the actual expenditures for the general fund and street fund of the entity; and

(iv) Notes to financial statements.

(C) The report shall include as supplemental information a schedule of general fixed assets, including land, buildings, and equipment.

(3) In the alternative to subdivision (c)(2) of this section, the governing body of the municipality may adopt an annual resolution requiring their audit to be performed in accordance with the guidelines and format prescribed by the Governmental Accounting Standards Board, the American Institute of Certified Public Accountants, and the United States Government Accountability Office, if applicable.

(d)(1) As an alternative to an audit, the municipal governing body may authorize an agreed-upon procedures engagement of the records and accounts.

(2) For the purposes of this section, agreed-upon procedures engagements shall be conducted in accordance with standards established by the American Institute of Certified Public Accountants and subject to the minimum procedures prescribed by the Legislative Auditor.

(e) The Legislative Joint Auditing Committee shall monitor the reports prescribed in this section to ensure that the reports meet the needs of the General Assembly, the public entities, and the general public.

History. Acts 1977, No. 160, § 1; 1985, No. 15, § 1; A.S.A. 1947, § 19-4416.1; Acts 2001, No. 1052, § 1; 2005, No. 499, § 1.

14-58-103. Withholding of membership dues.

(a) As used in this section, "municipality" means:

(1) A city of the first class;

(2) A city of the second class;

(3) An incorporated town; or

(4) A city or town department, agency, board, or commission.

(b)(1) Effective January 1, 2006, upon receipt of a written request signed by a full-time municipal employee who is represented by a union or professional association, the municipality shall withhold membership dues of the union or professional association from the salary of the employee.

(2) The withholding request authorized by this section shall be on a form provided to the employee by the municipality.

(c) After a withholding request is received by the municipality and after withholding of an employee's dues is started under subsection (b) of this section, the withholding shall be discontinued only upon receipt of a written notice of cancellation signed by the employee.

(d) The municipality shall transmit all dues that are withheld under this section to the union or professional association representing the employee within five (5) days of the end of the pay period.

History. Acts 2005, No. 2133, § 1.

14-58-104. Specific purchases and contracts.

(a) The municipal governing body of a city of the first class, city of the second class, or an incorporated town may purchase the following commodities without soliciting bids:

(1) Motor fuels, oil, asphalt, asphalt oil, and natural gas; and

(2) New motor vehicles from a motor vehicle dealer licensed under the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., if the motor vehicle is purchased for an amount not to exceed the fleet price awarded by the Office of State Procurement and in effect at the time the municipal governing body of a city of the first class, city of the second class, or an incorporated town submits the purchase order for the same make and model motor vehicle.

(b) The municipal governing body of a city of the first class, city of the second class, or an incorporated town may renew or extend the term of an existing contract without soliciting bids.

History. Acts 2009, No. 756, § 23.

Subchapter 2 — Budgets in Mayor-Council Municipalities

SECTION.
14-58-202. Adoption.

14-58-202. Adoption.

Under this subchapter, the governing body of the municipality shall, on or before February 1 of each year, adopt a budget by ordinance or resolution for operation of the city or town.

History. Acts 1959, No. 28, § 2; 1981, No. 344, § 2; A.S.A. 1947, § 19-4422; Acts 2011, No. 622, § 1.

Amendments. The 2011 amendment inserted "by ordinance or resolution."

Subchapter 3 — Cities of the First Class Generally

SECTION.
14-58-302. Annual report by mayor.
14-58-303. Purchases and contracts generally.
14-58-306. Disposal of municipal supplies, etc.
14-58-309. [Repealed.]

Effective Dates. Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this act is immediately necessary to assist dealers that are facing possible termination of their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-58-302. Annual report by mayor.

(a) The mayor of a first class city shall prepare and submit to the municipal governing body within the first ninety (90) days of each year a complete report on the finances and administrative activities of the city during the previous year.

(b) The mayor shall also keep the governing body advised as to the financial condition and future needs of the city and make such recommendations as to him or her may be desirable.

History. Acts 1959, No. 28, § 4; A.S.A. 1947, § 19-4424; Acts 2009, No. 161, § 2.

Amendments. The 2009 amendment in (a) substituted "the first ninety (90) days of each year" for "sixty (60) day after the end of each fiscal year", and deleted "fiscal" following "previous".

14-58-303. Purchases and contracts generally.

(a) In a city of the first class, city of the second class, or incorporated town, the mayor or the mayor's duly authorized representative shall have exclusive power and responsibility to make purchases of all supplies, apparatus, equipment, materials, and other things requisite for public purposes in and for the city and to make all necessary contracts for work or labor to be done or material or other necessary things to be furnished for the benefit of the city, or in carrying out any work or undertaking of a public nature in the city.

(b)(1)(A) Except as provided under § 14-58-104, the municipal governing body of any city of the first class shall provide by ordinance the procedure for making all purchases which do not exceed the sum of twenty thousand dollars ($20,000).

(B) Except as provided under § 14-58-104, the municipal governing body of any city of the second class or incorporated town may provide by ordinance the procedure for making all purchases.

(2)(A)(i) Except as provided under § 14-58-104, in a city of the first class where the amount of expenditure for any purpose or contract exceeds the sum of twenty thousand dollars ($20,000), the mayor or the mayor's authorized representative shall invite competitive bidding on the purpose or contract by legal advertisement in any local newspaper.

(ii) Bids received pursuant to the advertisement shall be opened and read on the date set for receiving the bids in the presence of the mayor or the mayor's authorized representative.

(iii) The mayor or the mayor's authorized representative shall have exclusive power to award the bid to the lowest responsible bidder, but may reject any and all bids received.

(B) The governing body by ordinance may waive the requirements of competitive bidding in exceptional situations where this procedure is deemed not feasible or practical or as provided under § 14-58-104.

(c)(1) In a city of the first class, a city of the second class, or an incorporated town, the governing body by ordinance shall have the option to make purchases by participation in a reverse Internet auction, except that purchases and contracts for construction projects and materials shall be undertaken pursuant to subsections (a) and (b) of this section and § 22-9-203.

(2) The ordinance shall include, but is not limited to, the following procedures:

(A) Bidders shall be provided instructions and individually secured passwords for access to the reverse Internet auction by either the city or the town, or the reverse Internet auction vendor;

(B) The bidding process shall be timed, and the time shall be part of the reverse Internet auction specifications;

(C) The reverse Internet auction shall be held at a specific date and time;

(D) The reverse Internet auction and bidding process shall be interactive, with each bidder able to make multiple bids during the allotted time;

(E) Each bidder shall be continually signaled his or her relative position in the bidding process;

(F) Bidders shall remain anonymous and shall not have access to other bidders or bids; and

(G) The governing body shall have access to real-time data, including all bids and bid amounts.

(3) The governing body may create by an additional ordinance reverse Internet auction specifications for the anticipated purchase of a specific item or purchase.

(4)(A) The governing body is authorized to pay a reasonable fee to the reverse Internet auction vendor.

(B) The fee may be included as part of the bids received during the reverse Internet auction and paid by the winning bidder or paid separately by the governing body.

(5) The governing body retains the right to:

(A) Refuse all bids made during the reverse Internet auction; and

(B) Begin the reverse Internet auction process anew if the governing body determines it is in the best interest of the city or town.

(d) For purposes of this section:

(1) "Reverse Internet auction" means an Internet-based process in which bidders:

(A) Are given specifications for items and services being sought for purchase by a municipality; and

(B) Bid against one another in order to lower the price of the item or service to the lowest possible level; and

(2) "Reverse Internet auction vendor" means an Internet-based entity that hosts a reverse Internet auction.

History. Acts 1959, No. 28, § 5; 1979, No. 154, § 1; 1985, No. 745, § 3; A.S.A. 1947, § 19-4425; Acts 1995, No. 812, § 1; 2001, No. 508, § 1; 2005, No. 1435, § 2; 2005, No. 1957, § 1; 2009, No. 756, § 24.

Amendments. The 2009 amendment inserted "Except as provided under § 14-58-104" in (b)(1)(A), (b)(1)(B), and (b)(2)(A)(i), inserted "or as provided under § 14-58-104" in (b)(2)(B), and made related changes.

CASE NOTES

Analysis

Lowest Responsible Bidders.
Second Class Cities.

Lowest Responsible Bidders.

African-American contractor who was the sixth lowest bidder on a contract that the city awarded to a Caucasian contractor, and then extended without competitive bidding, did not have a property interest in the extended portion of the contract; thus, the African-American contractor's 42 U.S.C.S. § 1983 claim against the city failed. Harris v. Hays, 452 F.3d 714 (8th Cir. 2006).

Second Class Cities.

The statute does not allow cities of the second class to pass an ordinance authorizing their mayors to make purchases or to contract for labor and materials up to a certain amount. Burke v. Elmore, 341 Ark. 129, 14 S.W.3d 872 (2000).

14-58-306. Disposal of municipal supplies, etc.

(a) In a city of the first class, city of the second class, or incorporated town, the mayor or his or her authorized representative may sell or exchange any municipal supplies, materials, or equipment with a value of twenty thousand dollars ($20,000) or less, unless the municipal governing body shall, by ordinance, establish a lesser amount.

(b) No item or lot of supplies, material, or equipment that is to be disposed of as one (1) unit shall be sold without competitive bidding if the amount exceeds twenty thousand dollars ($20,000) or the maximum provided by ordinance, unless the mayor shall certify in writing to the governing body that, in his or her opinion, the fair market value of the item or lot is less than the amount established by ordinance as indicated.

(c)(1) If an item of personal property belonging to a municipality becomes obsolete or is no longer used by a municipality, it may be:

(A) Sold at public or Internet auction;

(B) Sent to the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration; or

(C) Transferred to another governmental entity within the state.

(2) If an item is not disposed of under subdivision (c)(1) of this section, the item may be disposed of in the landfill used by the municipality if the mayor or his or her authorized representative certifies in writing and the governing body of the municipality approves that it has:

(A) Been rendered worthless by damage or prolonged use; or

(B)(i) Only residual value; and

(ii) Been through public auction and not sold.

(d)(1) A record shall be maintained of all items disposed of and reported to the governing body.

(2) The municipal fixed asset listing shall be amended to reflect all disposal of property made under this section.

History. Acts 1959, No. 28, § 7; A.S.A. 1947, § 19-4427; Acts 2007, No. 661, § 1; 2011, No. 622, § 2.

Amendments. The 2007 amendment added (c).

The 2011 amendment, in (a), inserted "city of the second class, or incorporated town," "or her," and "with a value of twenty thousand dollars ($20,000) or less, unless the municipal governing body shall, by ordinance, establish a lesser amount"; in (b), deleted the first sentence and inserted "twenty thousand dollars ($20,000) or"; inserted "or Internet" in (c)(1)(A); and added (d).

14-58-309. [Repealed.]

Publisher's Notes. This section, concerning legislative findings, was repealed by Acts 2011, No. 629, § 4. The section was derived from Acts 1999, No. 1341, §§ 1, 2.

Subchapter 10 — Alternative Negotiated Purchasing for Municipalities

SECTION.

14-58-1001. Projects exceeding two million dollars.

14-58-1001. Projects exceeding two million dollars.

(a) In the event funds from any sources for a municipal project other than revenues derived from a performance-based efficiency project exceed two million dollars ($2,000,000), excluding the cost of land, the provisions of this subchapter and all other provisions of the Arkansas Code of 1987 Annotated governing construction of public facilities, including, but not limited to, the provisions of § 22-9-201 et seq. at the election of municipalities shall not be applicable to the project if the selection and contracting process set forth in this section is followed.

(b)(1) The selection procedures for the construction manager, general contractor, architect, or engineer shall provide for solicitation for qualified, licensed professionals to submit proposals.

(2) The procedures shall assure the design and completion of the project in an expeditious manner while adhering to high standards of design and construction quality.

(3) A municipality shall:

(A) Publish notice of its intention to receive written proposals three (3) consecutive days in a newspaper of local distribution;

(B) Allow a minimum of ten (10) working days from the first date of publication for the professionals to send letters or resumes in response to the newspaper advertisement; and

(C) Provide additional means of notification, if any, as the municipality shall determine is appropriate.

(c)(1)(A) A preselection committee which shall be composed of at least three (3) members from the municipality shall review the proposals.

(B) The preselection committee shall select a maximum of five (5) applicants and schedule interviews.

(C) The municipality shall notify the finalists of their status.

(2)(A) The final selection committee shall be composed of the members on the preselection committee.

(B) The final interviews shall be held at the times and dates designated by the final selection committee.

(C) In selecting a general contractor, construction manager, architect, or engineer, the municipality shall consider established criteria, which shall include, but not be limited to, the following:

(i) The experience of the professional or professionals in similar projects;

(ii) The record of the professional or professionals in timely completion of the projects with high quality workmanship; and

(iii) Other similar matters to determine that the professional or professionals will complete the project within the time and budget and to the specifications set by the municipality.

(3)(A) The final selection committee shall make a formal recommendation to its governing body of the professional or professionals whom it determines to be in the best interest of the municipality.

(B)(i) Contracts for architectural, engineering, and land surveying professional consultant services shall be negotiated on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable prices without the use of competitive bidding.

(ii) No rule or regulation shall inhibit a municipality's authority to negotiate fees for the services.

(d)(1) Construction contracts for the projects shall not be entered into without a payment and performance bond in the amount of the contract and any amendments thereto and shall provide for the manner in which the construction shall be managed and supervised.

(2) All project architects and engineers shall be properly licensed in accordance with the Arkansas State Board of Architects, Landscape Architects, and Interior Designers and the State Board of Licensure for Professional Engineers and Professional Land Surveyors.

(3) The construction manager or general contractor shall be properly licensed by the Contractors Licensing Board.

(4)(A) All subcontractors on the project shall be properly licensed by the Contractors Licensing Board.

(B) Any person who is not considered a contractor under § 17-25-101 et seq. may continue to perform subcontracting work under the provisions of this subchapter.

(e) The funds may be represented in whole or in part by a written pledge or commitment from a donor, provided that the municipality shall assure itself of the financial stability of the donor to fulfill the pledge or commitment.

(f)(1) All projects constructed pursuant to this section, to the extent applicable, shall be in accordance and compliance with:

(A) Section 17-38-101 et seq., regulating plumbers;

(B) Section 17-33-101 et seq., regulating the heating, ventilation, air conditioning, and refrigeration industry;

(C) The Fire Prevention Act, § 12-13-101 et seq.;

(D) Section 12-80-101 et seq., regarding earthquake resistant design for public structure;

(E) Americans with Disabilities Act Accessibility Guidelines, 28 C.F.R. pt. 36, App. A, adopted by the authority; and

(F) The minimum standards of the authority and criteria pertaining to projects constructed under this section.

(2) Notwithstanding anything in this section to the contrary, the provisions of §§ 19-11-801, 22-9-101, 22-9-103, 22-9-104, and 22-9-213, § 22-9-301 et seq., § 22-9-401 et seq., § 22-9-501 et seq., § 22-9-601 et seq., § 22-9-701 et seq., and all competitive bidding statutes shall remain in full force and effect and not be affected hereby.

(3) This section shall not authorize a design-build project contract.

History. Acts 2005, No. 1989, § 1.

Cross References. Authorization for state agency to commit cash funds for construction — Penalty, § 22-9-103.

Contractors' Bonds, § 22-9-401 et seq.

Deposit of Securities, § 22-9-501 et seq.

Exemption of state projects from local regulation, § 22-9-213.

Minimum Prevailing Wage, § 22-9-301 et seq.

Observation by registered professionals required, § 22-9-101.

Policy, § 19-11-801.

Proposed capital expenditures, § 22-9-104.

Retainage, § 22-9-601 et seq.

CHAPTER 59

ARKANSAS MUNICIPAL ACCOUNTING LAW

SECTION.
14-59-101. Title.
14-59-102. Applicability.
14-59-105. Prenumbered checks — Electronic funds transfers.
14-59-107. Fixed asset records.
14-59-108. Reconciliation of bank accounts.
14-59-109. Prenumbered receipts.
14-59-110. Cash receipts journals.
14-59-111. Cash disbursements journals.
14-59-112, 14-59-113. [Repealed.]
14-59-114. Maintenance and destruction of accounting records.
14-59-115. Duties of municipal treasurer.
14-59-116. Annual publication of financial statement.
14-59-117. Withholding of turnback for noncompliance.
14-59-118. Penalty.

A.C.R.C. Notes. References to "this chapter" in §§ 14-59-101 through 14-59-116 may not apply to §§ 14-59-117 and 14-59-118 which were enacted subsequently.

14-59-101. Title.

This chapter shall be known and cited as the "Arkansas Municipal Accounting Law".

History. Acts 1973, No. 159, § 1; A.S.A. 1947, § 19-5301; Acts 2011, No. 621, § 1.
Amendments. The 2011 amendment deleted "of 1973" at the end of the sentence.

14-59-102. Applicability.

This chapter shall apply to all funds under the budgetary control of the council or board of directors of the various municipalities of this state, except water and sewer departments.

History. Acts 1973, No. 159, § 2; A.S.A. 1947, § 19-5302; Acts 2001, No. 1062, § 1.

14-59-105. Prenumbered checks — Electronic funds transfers.

(a) All disbursements of municipal funds, except those described in this section and as noted in § 14-59-106, petty cash funds, are to be made by prenumbered checks drawn upon the bank account of that municipality.

(b) The checks shall be of the form normally provided by commercial banking institutions and shall contain as a minimum the following information:

(1) Date of issue;

(2) Check number;

(3) Payee;

(4) Amount; and

(5) Signature of two (2) authorized disbursing officers of the city.

(c) Disbursements of municipal funds used for payment of salaries and wages of municipal officials and employees may be made by electronic funds transfer provided that the municipal employee or official responsible for disbursements maintains a ledger containing at least the:

(1) Name, address, and social security number of the employee receiving payment of salary or wages;

(2) Routing number from the bank in which the funds are held;

(3) Account number;

(4) Accounts clearing house trace number pertaining to the transfer;

(5) Date and amount transferred; and

(6) Proof that the employee has been notified of direct deposit of his or her salary or wages by electronic funds transfer.

(d) Disbursements of municipal funds used for payments to federal or state governmental entities may be made by electronic funds transfer.

(e)(1) Disbursements of municipal funds, other than for payments under subsections (c) and (d) of this section, may be made by electronic funds transfer provided that:

(A) The governing body of the municipality shall establish by ordinance an electronic funds payment system directly into payees' accounts in financial institutions in payment of any account allowed against the municipality;

(B) For purposes of this subsection, municipalities opting for an electronic funds payment system shall establish an electronic payment method that provides for internal accounting controls and documentation for audit and accounting purposes; and

(C) Each electronic payment method established under subdivision (e)(2) of this section shall be approved by the Legislative Joint Auditing Committee before implementation by the municipality.

(2) A single electronic funds payment may contain payments to multiple payees, appropriations, characters, or funds.

(f) A disbursement of municipal funds shall have adequate supporting documentation for the disbursement.

History. Acts 1973, No. 159, § 5; A.S.A. 1947, § 19-5305; Acts 1997, No. 543, § 1; 2009, No. 316, § 1; 2011, No. 621, § 2.

Amendments. The 2009 amendment added (e).

The 2011 amendment deleted "both in numerical and written form" following "Amount" in (b)(4); substituted "two (2) authorized disbursing officers" for "authorized disbursing officer" in (b)(5); deleted (c) and (d)(6); inserted present (d) and (e) and redesignated the remaining subsections accordingly.

14-59-107. Fixed asset records.

(a) The governing body shall adopt a policy defining fixed assets. At a minimum, the policy shall set forth the dollar amount and useful life necessary to qualify as a fixed asset.

(b)(1) All municipalities shall establish by major category and maintain, as a minimum, a listing of all fixed assets owned by the municipality.

(2) The listing shall be totaled by category with a total for all categories.

(3) The categories of fixed assets shall include the major types, such as:

(A) Land;

(B) Buildings;

(C) Motor vehicles, by department;

(D) Equipment, by department; and

(E) Other assets.

(c) The listing shall contain as a minimum:

(1) Property item number, if used by the municipality;

(2) Brief description;

(3) Serial number, if available;

(4) Date of acquisition; and

(5) Cost of property.

History. Acts 1973, No. 159, § 7; A.S.A. 1947, § 19-5307; Acts 2001, No. 1062, § 2; 2011, No. 621, § 3.

Amendments. The 2011 amendment added (a) and redesignated the remaining subsections accordingly; inserted "by department" in (b)(3)(C) and (D); and added "assets" in (b)(3)(E).

14-59-108. Reconciliation of bank accounts.

(a)(1) On a monthly basis, all municipalities shall reconcile their cash receipts and disbursements journals to the amount on deposit in banks.

(2) The reconciliation under subdivision (a)(1) of this section shall be approved by a municipal official or employee, other than the person preparing the reconciliation, as designated by the chief executive officer of the municipality.

(b) The reconciliations should take the following form:

City of .....

Date .....

Amount Per Bank Statement				
Dated				$ .00
Add:	Deposits in transit (Receipts recorded in Cash Receipts Journal not shown on this bank statement).			
DATE	RECEIPTS NO.	AMOUNT		
		$	.00	
			.00	
			.00	.00
Deduct:	Outstanding Checks (Checks issued and dated prior to date of bank statement per Cash Disbursements Journal not having yet cleared the bank).			
CHECK NO.	PAYEE	AMOUNT		
		$	.00	
			.00	
			.00	.00
RECONCILED BALANCE				$ .00

This reconciled balance shall agree to either the cash balance as shown on the municipality's check stubs running bank balance or the municipality's general ledger cash balance, whichever system the municipality employs.

History. Acts 1973, No. 159, § 12; A.S.A. 1947, § 19-5312; Acts 2011, No. 621, § 4.

Amendments. The 2011 amendment added (a)(2); and deleted "receiving state aid" following "municipalities" in (a)(1).

14-59-109. Prenumbered receipts.

(a) All funds received are to be formally receipted at the time of collection or the earliest opportunity by the use of prenumbered receipts or mechanical receipting devices.

(b)(1) In the use of prenumbered receipts, the following minimum standards shall be met:

(A) If manual receipts are used, receipts are to be prenumbered by the printer and a printer's certificate obtained and retained for audit purposes. The certificate shall state the date printing was done, the numerical sequence of receipts printed, and the name of the printer;

(B) The prenumbered receipts shall contain the following information for each item receipted:

(i) Date;

(ii) Amount of receipt;

(iii) Name of person or company from whom money was received;

(iv) Purpose of payment;

(v) Fund to which receipt is to be credited; and

(vi) Identification of employee receiving money.

(2) If manual receipts are used, the original receipt should be given to the party making payment. One (1) duplicate copy of the receipt shall be maintained in numerical order in the receipt book and made available to the auditors during the course of annual audit. Additional copies of the receipt are optional with the municipality and may be used for any purposes they deem fit.

(c) If an electronic receipting system is used, the system shall be in compliance with the Information Systems Best Practices Checklist provided by the Legislative Joint Auditing Committee.

History. Acts 1973, No. 159, § 4; A.S.A. 1947, § 19-5304; Acts 2011, No. 621, § 5.

Amendments. The 2011 amendment redesignated (a)(2) as present (b)(1); deleted former (b); in (a), substituted "funds received" for "items of income," inserted "at the time of collection or the earliest opportunity," and deleted "such as cash registers, or validating equipment" at the end; redesignated (a)(2)(C) as (b)(2); added "If manual receipts are used" at the beginning of (b)(1)(A) and (b)(2); redesignated (a)(2)(B)(vi) and (vii) as (b)(1)(B)(v) and (vi); substituted "Identification" for "Signature" in (b)(1)(B)(vi); and added (c).

14-59-110. Cash receipts journals.

(a)(1) Municipalities shall establish a cash receipts journal or an electronic receipts listing that shall indicate:

(A) The receipt number;

(B) The date of the receipt;

(C) The payor;

(D) The amount of the receipt; and

(E) Classification or general ledger account.

(2) The classification of the receipts shall include the major sources of revenue, such as:

(A) State revenues;

(B) Property taxes;

(C) Sales taxes;

(D) Fines, forfeitures, and costs;

(E) Franchise fees;

(F) Transfers in; and

(G) Other.

(b)(1) All items of receipts shall be posted to and properly classified in the cash receipts journal or electronic receipts listing.

(2)(A) The journal shall be properly balanced and totaled monthly and on a year-to-date basis.

(B) The journal shall be reconciled monthly to total bank deposits as shown on the municipalities' bank statements.

(3) The electronic receipts listing shall be posted to the general ledger at least monthly. The general ledger shall be reconciled monthly to total bank deposits as shown on the municipalities' bank statements.

History. Acts 1973, No. 159, § 10; A.S.A. 1947, § 19-5310; Acts 2001, No. 1062, § 3; 2011, No. 621, § 6.

Amendments. The 2011 amendment rewrote the introductory language of (a)(1); deleted former (a)(2)(A) with introductory language; redesignated former (a)(2)(A)(i) through (iv) as (a)(1)(A) through (D); added (a)(1)(E); redesignated former (a)(1)(B) through (a)(1)(B)(v) as (a)(2) through (a)(2)(E); deleted (a)(1)(B)(vi); inserted (a)(2)(F) and (G); substituted "fees" for "taxes" in (a)(2)(E); added "or electronic receipts listing" at the end of (b)(1); substituted "properly balanced" for "footed, crossfooted" in (b)(2)(A); and added (b)(3).

14-59-111. Cash disbursements journals.

(a)(1) Municipalities shall establish a cash disbursements journal or electronic check register that shall indicate the date, payee, check number or transaction number, amount of each check written or transaction, and classification or general ledger account.

(2) The classifications of expenditures shall include the major type of expenditures by department, such as:

(A) Personal services;

(B) Supplies;

(C) Other services and charges;

(D) Capital outlay;

(E) Debt service; and

(F) Transfers out.

(b)(1) The cash disbursements journal shall be properly balanced and totaled monthly and on a year-to-date basis.

(2) The cash disbursements journal shall be reconciled monthly to total bank disbursements as indicated on the monthly bank statements.

(3) The electronic check register shall be posted to the general ledger at least monthly. The general ledger shall be reconciled monthly to total bank disbursements as indicated on the monthly bank statements.

History. Acts 1973, No. 159, § 11; A.S.A. 1947, § 19-5311; Acts 2001, No. 1062, § 4; 2011, No. 621, § 7.

Amendments. The 2011 amendment redesignated (a)(1)(A) and (B) as (a)(1) and rewrote (a)(1); rewrote (a)(2)(A) through (E); added (a)(2)(F); substituted "properly balanced" for "footed, cross-footed" in (b)(1); and added (b)(3).

14-59-112, 14-59-113. [Repealed.]

Publisher's Notes. These sections, concerning cash receipts journals and cash disbursements journals, were repealed by Acts 2001, No. 1062, § 8. They were derived from the following resources:

14-59-112. Acts 1973, No. 159, § 8; A.S.A. 1947, § 19-5308.

14-59-113. Acts 1973, No. 159, § 9; A.S.A. 1947, § 19-5309.

For present law, see § § 14-59-110 and 14-59-111.

14-59-114. Maintenance and destruction of accounting records.

(a) Accounting records can basically be divided into the following three (3) groups:

(1)(A) Support Documents. Support documents consist primarily of the following items:

(i) Cancelled checks;
(ii) Invoices;
(iii) Bank statements;
(iv) Receipts;
(v) Deposit slips;
(vi) Bank reconciliations;
(vii) Check book register or listing;
(viii) Receipts listing;
(ix) Monthly financial reports;
(x) Payroll records;
(xi) Budget documents; and
(xii) Bids, quotes, and related documentation.

(B) These records shall be maintained for a period of at least four (4) years and in no event shall be disposed of before being audited for the period in question.

(2)(A) Semipermanent Records. Semipermanent records consist of:

(i) Fixed assets and equipment detail records;
(ii) Investment and certificate of deposit records;
(iii) Journals, ledgers, and subsidiary ledgers; and
(iv) Annual financial reports.

(B)(i) These records shall be maintained for a period of not less than seven (7) years and in no event shall be disposed of before being audited for the period in question.

(ii) For investment and certificate of deposit records, the seven (7) years of required maintenance begins on the date of maturity.

(3)(A) Permanent Records. Permanent records consist of:

(i) City or town council minutes;
(ii) Ordinances;
(iii) Resolutions;

(iv) Employee retirement documents; and

(v) Annual financial audits.

(B) These records shall be maintained permanently.

(b) When documents are destroyed, the municipality shall document the destruction by the following procedure:

(1)(A) An affidavit is to be prepared stating which documents are being destroyed and to which period of time they apply, indicating the method of destruction;

(B) This affidavit is to be signed by the municipal employee performing the destruction and one (1) council member.

(2)(A) In addition, the approval of the council for destruction of documents shall be obtained, and an appropriate note of the approval indicated in the council minutes along with the destruction affidavit;

(B) This council approval shall be obtained before the destruction.

History. Acts 1973, No. 159, § 15; 1979, No. 616, § 2; A.S.A. 1947, § 19-5315; Acts 2011, No. 621, § 8.

Amendments. The 2011 amendment substituted "three (3)" for "two (2)" in the introductory language of (a); added (a)(1)(A)(iv) through (xii); substituted "four (4)" for "three (3)" in (a)(1)(B); substituted "Semipermanent" for "Permanent" twice in the introductory paragraph of (a)(2)(A); deleted (a)(2)(A)(i) through (iv) and redesignated (a)(2)(A)(v) as (a)(2)(A)(i); added (a)(2)(A)(ii) through (iv); substituted "and in no event shall be disposed of before being audited for the period in question" for "by the municipality, after which period the records may be destroyed after an audit has been made of the records" in (a)(2)(B); and added (a)(2)(B)(ii) and (a)(3).

14-59-115. Duties of municipal treasurer.

(a) Each municipal treasurer of this state or the designated representative that has been approved by the governing body shall submit a monthly financial report to the council or board of directors.

(b)(1) Municipal treasurers shall maintain the accounting records prescribed in this chapter.

(2)(A) If the treasurer does not comply with the provisions of this chapter or requests that specific duties be assigned to another employee or contracting entity, the governing body of a municipality may assign specific duties outlined in this chapter to another employee, or it may contract for such services to be performed by a private, qualified person or entity.

(B) The governing body of a municipality may not assign duties relating to the collecting or disbursing of funds to anyone other than an employee of the municipality.

History. Acts 1973, No. 159, § 13; A.S.A. 1947, § 19-5313; Acts 2001, No. 1062, § 5; 2011, No. 621, § 9.

Amendments. The 2011 amendment, in (a), substituted "financial report" for "a copy of the bank reconciliations" and deleted "city" preceding "council"; and substituted "collecting" for "receipting" in (b)(2)(B).

14-59-116. Annual publication of financial statement.

(a)(1) The governing body of each municipality shall publish annually a financial statement of the municipality, including receipts and expenditures for the period and a statement of the indebtedness and financial condition of the municipality. The financial statement shall be published one (1) time in a newspaper published in the municipality.

(2) This financial statement shall be at least as detailed as the minimum record of accounts as provided in this chapter.

(3) This financial statement shall be published by April 1 of the following year.

(b) In municipalities in which no newspaper is published, the financial statement shall be posted in two (2) of the most public places in the municipality.

History. Acts 1973, No. 159, §§ 18, 19, as added by 1977, No. 308, § 1; A.S.A. 1947, §§ 19-5316, 19-5317; Acts 2011, No. 621, § 10.

Amendments. The 2011 amendment rewrote (a)(1), (a)(3) and (b).

14-59-117. Withholding of turnback for noncompliance.

(a)(1) If the Division of Legislative Audit determines that a municipal treasurer is not substantially complying with this chapter, the division shall report the findings to the Legislative Joint Auditing Committee.

(2)(A) If a public official or a private accountant determines that a municipal treasurer is not substantially complying with this chapter, the official or accountant shall notify the Legislative Joint Auditing Committee of his or her findings.

(B) Upon notification, the Legislative Joint Auditing Committee shall direct the division to confirm that the municipal treasurer is not substantially complying with this chapter.

(C) Upon confirmation, the division shall report the findings to the Legislative Joint Auditing Committee.

(b)(1) Upon notification of noncompliance by the division, the Legislative Joint Auditing Committee shall notify in writing the mayor and the city council or town council that the municipality's accounting records do not substantially comply with this chapter.

(2) The municipality has sixty (60) days after the date of notification to bring the accounting records into substantial compliance with this chapter.

(3)(A) After the sixty (60) days allowed for compliance or upon request by the appropriate municipal officials, the division shall review the records to determine if the municipality substantially complies with this chapter.

(B) The division shall report its findings to the Legislative Joint Auditing Committee.

(c)(1)(A) If the municipality has not achieved substantial compliance within the sixty-day period, the Legislative Joint Auditing Committee may report the noncompliance to the Treasurer of State.

(B) Upon receipt of the notice of noncompliance from the Legislative Joint Auditing Committee, the Treasurer of State shall place fifty percent (50%) of the municipality's turnback in escrow until the Legislative Joint Auditing Committee reports to the Treasurer of State that the municipality has substantially complied with this chapter.

(2) If the municipality has not achieved substantial compliance within the sixty-day period, the governing body of the municipality shall assign specific duties outlined in this chapter to another employee or shall contract for the services to be performed by a qualified person or entity.

(3)(A) The division shall notify the Legislative Joint Auditing Committee when the municipality has substantially complied with this chapter.

(B)(i) The Legislative Joint Auditing Committee shall notify the Treasurer of State that the municipality has substantially complied with this chapter.

(ii) Upon notice of compliance from the Legislative Joint Auditing Committee, the Treasurer of State shall remit all turnback due to the municipality.

(d)(1) If the division has not received a request for a review of the records from the municipality before the end of the one-hundred-twenty-day period after the first date of notification of noncompliance, the Legislative Joint Auditing Committee may notify the municipality and the Treasurer of State of the continued noncompliance.

(2) Upon notice by the Legislative Joint Auditing Committee, the Treasurer of State shall withhold all turnback until such time that the accounting records have been reviewed and determined by the division to be in substantial compliance with this chapter.

(e)(1) If the division has not received a request for a review of the records from the municipality before the end of six (6) months after the initial notification of noncompliance, the Legislative Joint Auditing Committee may notify the municipality and the Treasurer of State of the continued noncompliance.

(2) Upon notice of noncompliance for six (6) months, the municipality forfeits all escrowed funds, and the Treasurer of State shall redistribute all escrowed turnback funds applicable to the municipality among all other municipalities receiving turnback.

(3) The municipality shall not be eligible to receive any additional turnback from the state until the Legislative Joint Auditing Committee notifies the Treasurer of State that the municipality has substantially complied with this chapter.

History. Acts 2001, No. 1062, § 6; 2009, No. 288, § 1.

A.C.R.C. Notes. References to "this chapter" in §§ 14-59-101 through 14-59-

116 may not apply to this section which was enacted subsequently.

Amendments. The 2009 amendment redesignated (a), inserted "substantially" in (a)(1) and (a)(2)(A), and substituted "municipal treasurer is not substantially complying with this chapter" for "required books and records are not being maintained" in (a)(2)(B); substituted "has sixty (60)" for "shall have ninety (90)" in (b)(2) and substituted "sixty (60)" for "ninety (90)" in (b)(3)(A); substituted "sixty-day" for "ninety-day" and "may" for "shall" in (c)(1)(A), inserted (c)(2), and redesignated the subsequent subdivision accordingly; substituted "one-hundred-twenty-day" for "six-month" and "may" for "shall" in (d)(1); substituted "six (6) months" for "one (1) year" in (e)(1) and (e)(2), and substituted "may" for "shall" in (e)(1); and made minor stylistic changes.

14-59-118. Penalty.

(a) Any municipal treasurer who refuses or neglects to maintain the books and records provided in this chapter shall be deemed guilty of malfeasance.

(b) Upon conviction in circuit court, the treasurer shall be fined in any sum not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) and shall be removed from office.

History. Acts 2001, No. 1062, § 7.

A.C.R.C. Notes. References to "this chapter" in §§ 14-59-101 through 14-59-116 may not apply to this section which was enacted subsequently.

CHAPTER 60

WORKERS' COMPENSATION

SECTION.
14-60-104. Coverage through private carrier or self-funding.
14-60-105. Municipalities over 70,000.
14-60-106. Municipalities over 150,000.

Effective Dates. Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

14-60-104. Coverage through private carrier or self-funding.

(a) Municipalities may provide workers' compensation coverage either through private carriers or through one or more self-funding groups.

(b) Self-funding groups established for this purpose shall meet the following requirements:

(1) Any self-funding group established to provide such coverage for municipalities only shall offer coverage to any municipality in the state that applies for coverage;

(2) Any such group established to provide coverage for both municipalities and counties shall offer coverage to any municipality or county in the state desiring to participate therein;

(3) Any group established to provide workers' compensation coverage to municipalities or to counties and municipalities shall offer such coverage at rates as established and filed with the Workers' Compensation Commission by the organization establishing the self-funding group. Rates for municipalities participating in any such group shall be revised annually based on the cost experience of the particular municipality, or group of municipalities, or group of municipalities and counties; and

(4)(A) Any self-funding group of participating municipalities or counties which is governed by a board of trustees of elected municipal or county officials shall be subject to the regulations of the Workers' Compensation Commission applicable to self-insured groups or providers. However, cities and counties shall not be required to enter into an indemnity agreement binding them jointly and severally.

(i) Each board governing a self-funding group shall be permitted to declare dividends or give credits against renewal premiums based on annual loss experience.

(ii) All self-funded groups shall obtain excess reinsurance from an admitted or approved insurance company doing business in Arkansas.

(B) However, in lieu of the reinsurance requirements in subdivision (b)(4)(A) of this section, any self-funded group under this section with one million five hundred thousand dollars ($1,500,000) or more in annually collected premiums may provide excess reserves of twenty percent (20%) of annual premiums by any one (1) of the following ways:

(i) Cash or certificates of deposit in Arkansas banks;

(ii) Letters of credit from an Arkansas bank; or

(iii) Purchase of reinsurance from the National League of Cities' Reinsurance Company or County Reinsurance, Limited, a national reinsurance facility for county governments.

History. Acts 1985, No. 866, § 2; 1985 (1st Ex. Sess.), No. 34, § 1; 1985 (1st Ex. Sess.), No. 43, § 1; A.S.A. 1947, § 81-1365; Acts 1987, No. 206, § 1; 2003, No. 1473, § 70.

14-60-105. Municipalities over 70,000.

Municipalities with populations over seventy thousand (70,000) citizens are specifically authorized to provide workers' compensation coverage for their officials and employees through either private carriers or by self-funding on either a statewide or an individual basis.

History. Acts 1986 (2nd Ex. Sess.), No. 22, § 1; A.S.A. 1947, § 81-1368; Acts 1999, No. 1179, § 13.

14-60-106. Municipalities over 150,000.

Municipalities with populations over one hundred fifty thousand (150,000) citizens or their sewer committees are specifically authorized to provide workers' compensation coverage for their officials and employees through either private carriers or by self-funding on either a statewide or individual basis.

History. Acts 1997, No. 975, § 14.

CHAPTER 61

CITY MANAGER ENABLING ACT OF 1989

SECTION.
14-61-113. Petition process for special elections.
14-61-114. Options may also be referred by vote, ordinance — Mayor's veto power.
14-61-119. Removal of director.

Effective Dates. Acts 2007, No. 729, § 3: Mar. 30, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas cities are faced with ever increasing problems of providing services to their citizens caused by a combination of globalization, rapid technological change, rising citizen expectations, the need for more accountability, mandates from higher levels of government, and a constrained tax base which together have created a context in which more effective and efficient methods of governance have become mandatory; and that this act is immediately necessary to meet these needs and for the efficiency of government. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-61-113. Petition process for special elections.

Except for questions that may be referred to the voters by the board of directors, unless it is a city where a federal court has ordered the redistricting of wards under the federal Voting Rights Act of 1965, options provided by this chapter shall be voted on at special elections called as a result of a petition for the special election being filed with the city clerk and provided to the mayor. The following procedure shall be utilized for initial elections to organize under the management form of government, for reorganization elections by a city already operating under the management form of government, and for elections to reorganize the selection of directors in cities where a federal court has ordered the redistricting of wards under the federal Voting Rights Act of 1965:

(1) A petition that calls for an election on one (1) particular option for selecting members of the board of directors using the form of the question outlined in § 14-61-115(b) shall be filed with the city clerk and provided to the mayor. The city clerk shall note on the petition the date and time that it was filed. If such a petition contains the signatures of electors equal in number to fifteen percent (15%) of the number of ballots cast for the mayor, or if the mayor is not directly elected, for the director position receiving the highest number of votes in the last general election, then the mayor by proclamation in accordance with § 7-11-201 et seq. shall submit the question to the electors at a special election, provided:

(A)(i) The city clerk shall verify the number of signatures on the petitions within ten (10) days of the date they are filed.

(ii) If there are insufficient signatures on the petitions, the petitioners shall not receive any extensions for the petition.

(iii) If, however, there are a sufficient number of signatures on the petitions but the city clerk is unable to verify the required number of signatures as those of qualified electors, then the petitioners will be given ten (10) days to provide a sufficient number of verified signatures;

(B) The proclamation calling the special election shall be issued within three (3) working days of the date the city clerk verifies the number of signatures on the petitions;

(C) The special election shall be held not more than sixty (60) days after the proclamation calling the election, provided that if the county board of election commissioners certifies in writing that it cannot prepare the ballots because of other pending elections, then the election can be held not more than ninety (90) days after the proclamation.

(2) Except for the provisions of subdivision (1)(A) of this section, if petitions filed with the mayor that call for an election on one (1) of the options set forth in this chapter are found to be insufficient for any reason whatsoever, then new petitions will have to be circulated and filed before the question can be considered again.

(3) Notwithstanding subdivision (2) of this section, if two (2) or more groups file petitions seeking a special election on one (1) of the options set forth in this chapter and the first filed petitions are declared to be insufficient, then the city clerk will determine the sufficiency of the petitions that were filed next in time. Otherwise, upon a declaration that a set of petitions is sufficient and the first in time, then all petitions filed after the first sufficient petitions and before the special election shall be deemed moot and may be destroyed.

(4) Once an election has been held pursuant to the provisions of any act that results in a change in the manner of selecting the governing body of a city with the manager form of government or seeks to reorganize a manager-government city under any other form of government, then none of the options presented by this chapter or any act concerning the organization of the government under any form of municipal government may be submitted to the voters for a period of four (4) years from the date of the election.

(5) Except as provided in § 14-61-114(a), if an election held pursuant to the provisions of any act fails to result in a change in the manner of selecting the governing body of a city with the manager form of government or fails to reorganize such a city under any other form of government, then no other petitions seeking to adopt any of the options presented by this chapter or to reorganize the city under any form of municipal government may be submitted to the voters for a period of two (2) years from the date of the election.

History. Acts 1989, No. 907, § 11; 1993, No. 1294, § 4; 1995, No. 750, § 1; 2005, No. 2145, § 40; 2007, No. 1049, § 60; 2009, No. 1480, § 78.

Amendments. The 2007 amendment, in (1), inserted "in accordance with § 7-5-103(b)" in the introductory language, and rewrote (C).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in the last sentence of the introductory language of (1).

14-61-114. Options may also be referred by vote, ordinance — Mayor's veto power.

(a)(1) Notwithstanding any other provision, the board of directors in a city operating under the city manager form of government may by a two-thirds vote of all the members, including the mayor, refer to a special or general election, for approval by a majority of the qualified electors voting on the issue, one (1) of the options set forth in § 14-61-107, provided no election on a board-referred option has been held within the previous two (2) years.

(2) Notwithstanding the other provisions of this subsection and §§ 14-43-201 and 14-61-117, in a city operating under the management form of government where a federal court has ordered the redistricting of wards under the federal Voting Rights Act of 1965, the voters of the city are authorized to petition for a special election to vote on the options set forth in § 14-61-107 for reorganizing the selection of directors, including the election of a mayor at large, at any time. The option shall be voted on at special elections called as a result of a

petition for the special election's being filed with the city clerk and provided to the mayor under § 14-61-113.

(b) The board of directors in a city with the management form of government where all directors are elected from wards and the directly elected mayor does not have the veto power may by ordinance referred to the electors and approved by a majority of the qualified electors voting on the issue grant the mayor the veto power, provided that no election on such an ordinance will occur sooner than two (2) years after the last special election on the issue of veto power for the mayor.

(c) The board of directors in a city with the management form of government where all directors are elected from wards and the directly elected mayor has the veto power may by ordinance referred to the electors and approved by a majority of the qualified electors voting on the issue remove the mayor's veto power, provided that no election on such an ordinance will occur sooner than two (2) years after the last special election on the issue of veto power for the mayor.

(d)(1) The board of directors of any city operating under the management form of government may by ordinance refer to the electors the issue of electing the mayor from an at-large board position or the issue of granting veto power to the mayor, or both.

(2)(A) In any instance where the mayor of a city operating under the management form of government has a veto power, the board of directors may override the veto by a two-thirds vote of the number of members of the board.

(B) Mayors who have the veto power shall not be entitled to vote unless the vote is necessary for passage of a measure.

(e)(1) The board of directors by ordinance may provide that the duties of the city manager under § 14-47-120 or other statute be performed at the direction of the mayor.

(2) An ordinance under subdivision (e)(1) of this section shall not be amended for four (4) years following passage of the ordinance by the board of directors unless by an ordinance approved by a two-thirds vote of the board of directors.

(3) If an ordinance under subdivision (e)(1) of this section is passed, the mayor shall be compensated with a salary and benefit package comparable to the highest-ranking municipal official.

History. Acts 1989, No. 907, § 12; 1993, No. 1060, § 1; 1993, No. 1294, § 5; 1995, No. 750, § 2; 2007, No. 729, § 2.

Amendments. The 2007 amendment substituted "city manager" for "management" in (a)(1); substituted "shall not be entitled to vote unless the vote is necessary for passage of a measure" for "shall be entitled only to vote in case of a tie vote" in (d)(2)(B); added (e); and made minor stylistic changes.

14-61-119. Removal of director.

(a) The holder of the office of city director or the mayor is subject to removal by the electors qualified to vote for a successor of the incumbent.

(b) The procedure to effect the removal of the incumbent of this elective office is as follows:

(1) The city clerk shall send to the subject of the recall a certified letter, return receipt requested, and a copy of the petition stating the basis of the recall shall be mailed to the incumbent whose removal is sought under this section.

(2)(A)(i) A petition shall be filed with the city clerk within ninety (90) days after the collection of signatures began.

(ii) The collection of the signatures for the petition shall not begin before the date the certified letter is mailed under subdivision (b)(1) of this section.

(B) This petition shall be signed by electors entitled to vote for a successor to the incumbent sought to be removed equal in number to at least thirty-five percent (35%) of the number of ballots cast for all candidates for the position held by the incumbent sought to be removed at the preceding general election for that position.

(3) The petition shall contain a statement of the grounds and reasons on account of which the removal is sought.

(4) The signatures to the petition need not all be appended to one (1) paper, but each signer shall add to his or her signature his or her place of residence, giving street and number, if any.

(5) One of the signers of each of the papers shall make an oath before an officer competent to administer oaths that:

(A) The statements therein made are true as he or she believes;

(B) Each signature to the paper appended is a genuine signature of the person whose name it purports to be;

(C) The petition contains the information concerning the reason for the removal of the incumbent; and

(D) The petition contains the date upon which the collection of signatures began.

(c) Within ten (10) days of the date of filing the petition, the city clerk shall ascertain and determine whether or not the petition is signed by the requisite number of qualified electors. If necessary, the board of directors shall allow the city clerk extra help for that purpose.

(d) The city clerk shall attach to the petition his or her certificate showing the result of his or her examination.

(e) If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten (10) days.

(f) Within ten (10) days after an amendment, the clerk shall make like examination of the amended petition.

(1) If his or her certificate shows the amended petition to be insufficient, it shall be returned to the person filing it, without prejudice, however, to his or her filing a new petition to the same effect.

(2) If the petition is deemed sufficient, the clerk shall submit it to the board without delay.

(g) Upon receipt from the city clerk certifying that the petition is sufficient, the board shall order and fix a date for holding an election under § 7-11-201 et seq. This date shall be not more than ninety (90)

days from the date of the clerk's certificate to the board that a sufficient petition is filed.

(h) The board shall make or cause to be made, publication of notice and all arrangements for holding the election.

(i) The election shall be conducted and returned, and the result thereof declared in all respects as are other such elections under election laws.

(j) At the election, the proposition submitted to the electors shall be:

FOR the removal of (name of officer) from the Office of (Director)(Mayor) ..... ☐

AGAINST the removal of (name of officer) from the Office of (Director)(Mayor) ..... ☐

(k) If the majority of votes cast on the issue are in favor of the removal of the officer, the officer shall be removed and his or her office vacated, and it shall be filled in the manner provided for filling vacancies.

(l) If the majority of the votes cast on that issue are against the removal of the officer, the officer shall continue to serve.

(m) No recall petition may be filed against any officer until he or she has held his or her office for at least six (6) months, nor may any officer be subject to more than one (1) recall proceeding during any one (1) term of office.

History. Acts 1989, No. 907, § 17; 1991, No. 49, § 2; 2007, No. 1049, § 61; 2009, No. 1454, § 1; 2009, No. 1480, § 79; 2011, No. 778, § 1.

Amendments. The 2007 amendment, in (g), inserted "in accordance with § 7-5-103(b)," and substituted "not more than ninety (90) days" for "not less than thirty (30) days nor more than forty (40) days."

The 2009 amendment by No. 1454 inserted (b)(1), present (b)(2)(A)(ii), present (b)(5)(C), and present (b)(5)(D), and redesignated the remaining subdivisions accordingly; inserted gender-neutral language throughout the section; inserted "within ninety (90) days after the collection of signatures began" in (b)(2)(A)(i) and inserted "general" in (b)(2)(B); substituted "Upon receipt from the city clerk certifying that the petition is sufficient, the board shall" for "If the board shall find the petition thus submitted to it contains the requisite number of electors signed thereto and is otherwise found to be sufficient, it shall" in (g); substituted "during any one (1) term of office" for "between biennial elections" in (m); and made related and minor stylistic changes.

The 2009 amendment by No. 1480 substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in the first sentence of (g).

The 2011 amendment substituted "to his or her filing" for "to the filing of" in (f)(1).

RESEARCH REFERENCES

ALR. Constitutionality of state and local recall provisions. 13 A.L.R.6th 661.

SUBTITLE 4. PUBLIC FINANCE GENERALLY

CHAPTER 72

BONDS OF COUNTIES, CITIES, AND TOWNS

SUBCHAPTER.

1. General Provisions.
3. County Bonds for Courthouses and Jails.
6. Local Government Revenue Bond Elections.

Subchapter 1 — General Provisions

SECTION.

14-72-101. Municipal water and sewer revenue bonds for repayment of water pollution control grants.

14-72-101. Municipal water and sewer revenue bonds for repayment of water pollution control grants.

(a) Any city of the first class, city of the second class, or incorporated town, hereinafter referred to as a "municipality", which has received from the Arkansas Department of Environmental Quality a water pollution control project grant funded from the proceeds of bonds of the department issued pursuant to §§ 8-5-301 — 8-5-318 [repealed] may issue water revenue bonds under the provisions of § 14-234-201 et seq., sewer revenue bonds under the provisions of §§ 14-235-201 — 14-235-224, or combined water and sewer revenue bonds for the purpose of refunding the bonds of the department issued to fund the grant.

(b) The refunding bonds may be combined with other bonds issued by the municipality under the provisions of § 14-234-201 et seq. and §§ 14-235-201 — 14-235-224 into a single issue.

(c) All bonds issued under this section shall in all respects be authorized, sold, issued, and secured in the manner provided for other bonds issued under § 14-234-201 et seq. and §§ 14-235-201 — 14-235-224 pursuant to which the refunding bonds are being issued.

History. Acts 1973, No. 514, § 1; A.S.A. 1947, § 13-1238; Acts 1999, No. 1164, § 122.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'.(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

Subchapter 3 — County Bonds for Courthouses and Jails

SECTION.
14-72-303. Submission of question to electors — Special election.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-72-303. Submission of question to electors — Special election.

(a) If the county court decides that it would be advantageous to issue bonds under the authority of Arkansas Constitution, Amendment 17 [repealed], this section, and §§ 14-72-301, 14-72-302, and 14-72-304 — 14-72-307, it shall order the submission of the question to the qualified electors of the county at a special election to be held in accordance with § 7-11-201 et seq.

(b) In all other respects, the special election shall be held as provided by law for the conducting of general elections. It is made the duty of the sheriff of the county, by proclamation duly made and published for the time and in the manner provided by law, to give notice of the time and place of holding the election.

History. Acts 1929, No. 294, § 3; Pope's Dig., § 2469; A.S.A. 1947, § 13-1215; Acts 2005, No. 2145, § 41; 2007, No. 1049, § 62; 2009, No. 1480, § 80.

Amendments. The 2007 amendment substituted "a special election to be held in accordance with § 7-5-103(b)" for "the next general election" in (a); deleted former (b); and redesignated former (c) as present (b).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a).

Subchapter 6 — Local Government Revenue Bond Elections

SECTION.
14-72-606. Election procedures — Contest.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-72-606. Election procedures — Contest.

(a)(1) Whenever a county or municipality shall determine the need to issue revenue bonds, the issuance of which under the Arkansas Constitution requires approval at an election, the legislative body thereof shall, by ordinance, submit the question of the issuance of the revenue bonds to the qualified electors of the county or municipality.

(2) The question of the issuance of revenue bonds may be submitted at a special election called for that purpose in accordance with § 7-11-201 et seq., as provided in the ordinance, and held in the manner provided in this subchapter.

(3) When revenue bonds are to be issued for more than one (1) purpose, the principal amount of revenue bonds applicable to each purpose shall be stated on the ballot as a separate question, and no revenue bonds shall be issued for such a purpose unless a majority of the electors voting on the question shall have approved the issuance of revenue bonds for that purpose.

(4) Except as otherwise provided in this subchapter, the election shall be held and conducted in the same manner as a special or general election under the election laws of the state.

(b)(1) The ordinance shall set forth the form of ballot questions, which shall include a statement of the purposes for which the revenue bonds are to be issued and the proposed sources of repayment of the revenue bonds.

(2) Notice of the election shall be given by the clerk of the county or municipality by one (1) publication in a newspaper having general circulation within the county or municipality not less than ten (10) days prior to the election.

(c)(1) The county judge or mayor of the county or municipality shall proclaim the results of the election by issuing a proclamation and publishing the proclamation one (1) time in a newspaper having general circulation within the county or municipality.

(2)(A) The results of the election as stated in the proclamation shall be conclusive unless suit is filed in the circuit court in the county in which the municipality is located within thirty (30) days after the date of the publication.

(B) No other action shall be maintained to challenge the validity of the revenue bonds and of the proceedings authorizing the issuance of the bonds unless suit is filed in the circuit court within thirty (30) days after the date of the adoption of an ordinance authorizing the sale of the revenue bonds.

History. Acts 1986 (2nd Ex. Sess.), No. 2, § 4; A.S.A. 1947, § 13-1290; Acts 2005, No. 2145, § 42; 2007, No. 1049, § 63; 2009, No. 1480, § 81.

Amendments. The 2007 amendment substituted "special election called for that purpose in accordance with § 7-5-103(b)" for "general election or at a special election called for that purpose" in (a)(2); and rewrote (b)(2).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a)(2).

CHAPTER 77

LOCAL FISCAL MANAGEMENT RESPONSIBILITY ACT

SECTION.

14-77-102. Definitions.

Effective Dates. Acts 2005, No. 2201, § 12: Apr. 13, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Legislative Joint Auditing Committee and the Division of Legislative Audit provide essential auditing and investigative services to the General Assembly and the State of Arkansas; that to avoid confusion, the General Assembly finds it is necessary to combine the Arkansas Code provisions concerning the Division of Legislative Audit and the local audit section of the division in one Arkansas Code chapter; that to avoid certain undue hardships on public entities of the state, it is also necessary for the General Assembly to provide a basis of financial statement presentation for certain public entities; that the American Institute of Certified Public Accountants' Statement on Auditing Standards Number 99 regarding the detection of fraud requires auditors to document unsubstantiated allegations of fraud in their working papers; and that this act is immediately necessary because the General Assembly finds that the public disclosure of such unsubstantiated allegations do not serve a public purpose and may cause irreparable harm to innocent individuals and public employees. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-77-102. Definitions.

As used in this chapter:

(1) "Executive officer" means the following for the applicable political subdivisions:

(A) For school districts, an "executive officer" is the superintendent of the school or the executive director of the education service cooperative;

(B) For municipalities, an "executive officer" is the mayor, city manager, or city administrator; and

(C) For counties, an "executive officer" is the elected official exercising administrative control over a particular county employee;

(2) "Fiscal responsibility and management laws" means the following laws, as amended, and as applicable to the following subdivisions:

(A) Counties:

(i) County government, Arkansas Constitution, Amendment 55;

(ii) County Record Retention, § 13-10-101 et seq. [repealed];

(iii) Legislative Procedures (County), § 14-14-901 et seq.;

(iv) Executive Powers (County), § 14-14-1101 et seq.;

(v) Personnel Procedures (County), § 14-14-1201 et seq.;

(vi) Officers (County), § 14-15-101 et seq.;

(vii) Sale of county property generally, § 14-16-105, and Sale of surplus property, § 14-16-106;

(viii) County Funds, § 14-21-101 et seq.;

(ix) County Purchasing Procedures, § 14-22-101 et seq.;

(x) Claims Against Counties, § 14-23-101 et seq.;

(xi) County Warrants, § 14-24-101 et seq.;

(xii) The Arkansas County Accounting Law of 1973, § 14-25-101 et seq.;

(xiii) Correction of errors (on tax books), § 26-28-111;

(xiv) Settlement and payment of taxes: Time for payment, § 26-39-201; and

(xv) Review of audit reports by legislative governing bodies, § 10-4-219 [repealed];

(B) Municipalities:

(i) Prohibited actions by municipal council members or municipal officials and employees: Interest in offices or contracts, etc. by council members prohibited, § 14-42-107, and Prohibited actions by municipal officials or employees — Penalty, § 14-42-108;

(ii) Powers and Duties Generally (of municipal officers), § 14-43-501 et seq.;

(iii) Purchase, lease, and sale of real and personal property: Purchase, lease, and sale authorized, § 14-54-302;

(iv) Cities of the first class generally: Fiscal Affairs of Cities and Incorporated Towns, § 14-58-101 et seq.;

(v) The Arkansas Municipal Accounting Law of 1973, § 14-59-101 et seq.;

(vi) The Arkansas Municipal Water and Sewer Department Accounting Law of 1973, § 14-237-101 et seq.;

(vii) The Arkansas District Courts, Police Courts, and City Courts Accounting Law, § 16-10-201 et seq.; and

(viii) Review of audit reports by legislative governing bodies, § 10-4-418;

(C) Schools:

(i) School disbursing officer: Organization — Disbursing officer, § 6-13-618;

(ii) School district treasurer: District Treasurer, § 6-13-701 et seq.;

(iii) The Arkansas Teachers' Salary Law, § 6-17-901 et seq.;

(iv) School finance acts: Finances, § 6-20-101 et seq.;

(v) School's acquisition of commodities: Acquisition of Commodities Generally, § 6-21-301 et seq.; and

(vi) Review of audit reports by boards, § 6-1-101(d) and § 10-4-208(d)[repealed];

(D) The following laws are applicable to some or all of the political subdivisions:

(i) Limitation on legislative and taxing power — Local bond issues, Arkansas Constitution, Article 12, § 4;

(ii) Political subdivisions not to become stockholders in or lend credit to private corporations, Arkansas Constitution, Article 12, § 5;

(iii) Lending credit — Bond issues — Interest-bearing warrants, Arkansas Constitution, Article 16, § 1;

(iv) Levy and appropriation of taxes, Arkansas Constitution, Article 16, § 11;

(v) Local Capital Improvement Bonds, Arkansas Constitution, Amendment 62;

(vi) Revenue Bonds, Arkansas Constitution, Amendment 65;

(vii) Clerks of courts, collection and settlement, additional fees, investment of moneys held in trust:

(a) Fines, penalties, taxes, etc. — Collection and settlement — Accounting — Audit and adjustment, § 16-20-106;

(b) Collection and payment of additional fees — Use of funds, § 16-20-107 [repealed];

(c) Investment of moneys held in trust — Disposition of funds, § 16-20-108;

(viii) Depositories for Public Funds, § 19-8-101 et seq.

(ix) Public Works, § 22-9-101 et seq.; and

(x) The Local Fiscal Management Responsibility Act, § 14-77-101 et seq.;

(3) "Knowingly" means that a person is aware or should have been aware that his or her conduct will violate the fiscal responsibility and management laws;

(4) "Political subdivision" means any county, municipality, or school district of the State of Arkansas; and

(5) "Public officer or employee" means any officer or employee of a county, municipality, or school district located in the State of Arkansas.

History. Acts 1991, No. 724, § 2; 2003, No. 1185, § 36; 2005, No. 2201, § 8; 2007, No. 617, § 38.

Amendments. The 2007 amendment, in (1)(A), inserted "executive" preceding "director" and substituted "education service cooperative" for "educational cooperative."

Effective Dates. Acts 2003, No. 1185, § 36: Jan. 1, 2005, by its own terms.

CHAPTER 78

LOCAL GOVERNMENT SHORT-TERM FINANCING OBLIGATIONS

SECTION.
14-78-101. Title.
14-78-102. Definitions.
14-78-103. Authorization for issuance of obligations.
14-78-104. Refunding obligations.
14-78-105. Obligations may be secured by mortgage lien.
14-78-106. Tax exemption.
14-78-107. Obligations are negotiable instruments.
14-78-108. Nonliability.
14-78-109. Supplemental nature of this chapter.
14-78-110. Construction.

Effective Dates. Acts 2001, No. 1808, § 11: Apr. 19, 2001. Emergency clause provided: "It is found and determined by the General Assembly that legislation is needed to establish a procedure pursuant to which municipalities and counties may issue and sell short-term financing obligations under Amendment 78 to the Arkansas Constitution, and that the immediate passage of this act is necessary for municipalities and counties to avail themselves of the public debt market. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

14-78-101. Title.

This chapter shall be referred to and may be cited as the "Local Government Short-Term Financing Obligations Act of 2001".

History. Acts 2001, No. 1808, § 1.

14-78-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Chief executive" means the mayor of a municipality or the county judge of a county;

(2) "County" means any county in the State of Arkansas;

(3) "Issue" means, depending on the type of obligation, to issue, enter into, or incur;

(4) "Issue date" means the date on which the obligation commences to bear interest;

(5) "Issuer" means a municipality or a county;

(6) "Legislative body" means the quorum court of a county or the council, board of directors, board of commissioners, or similar elected governing body of a municipality;

(7) "Mortgage lien" means a lien on or security interest in real property or personal property, financed or refinanced, in whole or in part, with the proceeds of obligations;

(8) "Obligations" means short-term financing obligations;

(9) "Short-term financing agreement" means any loan agreement, line of credit agreement, note purchase agreement, security agreement, mortgage, trust indenture, or other agreement, other than the short-term financing obligation itself, pursuant to which a short-term financing obligation is secured, sold, or otherwise provided for; and

(10) "Short-term financing obligations" means "short-term financing obligations" within the meaning of Arkansas Constitution, Amendment 78.

History. Acts 2001, No. 1808, § 2.

14-78-103. Authorization for issuance of obligations.

(a)(1) Municipalities and counties are authorized to issue obligations for the purpose of acquiring, constructing, installing, and renting real property or tangible personal property having an expected useful life of more than one (1) year.

(2) The maximum term and maximum interest rate for the obligations shall be as set forth in Arkansas Constitution, Amendment 78.

(3) The amount of obligations issued shall be sufficient to pay all or a portion of the cost of accomplishing the specified purpose.

(4) Proceeds of the obligations may pay all or a portion of the costs of issuing the obligations.

(5) The obligations shall be issued pursuant to ordinance adopted by the legislative body specifying the principal amount of the obligations to be issued, the purpose or purposes for which the obligations are to be issued, and provisions with respect to the obligations.

(6) A municipality shall not authorize the issuance of obligations unless at the time of issuance, the aggregate principal amount of short-term financing obligations, including the obligations to be issued, outstanding and unpaid, will equal five percent (5%) or less of the assessed value of taxable property located within the municipality as determined by the last tax assessment completed prior to the issuance of the obligations to be issued.

(7) A county shall not authorize the issuance of obligations unless at the time of issuance, the aggregate principal amount of short-term financing obligations, including the obligations to be issued, outstanding and unpaid, will equal two and one-half percent (2.5%) or less of the assessed value of taxable property located within the county as determined by the last tax assessment completed prior to the issuance of the obligations to be issued.

(b) The obligations may:

(1) Be in registered or other form;

(2) Be in denominations exchangeable for obligations of another denomination;

(3) Be payable in or out of the state;

(4) Be issued in one (1) or more series, bearing the date or dates of maturity;

(5) Be payable in the medium of payment, subject to terms of redemption; and

(6) Contain other terms, covenants, and conditions as the ordinance or short-term financing agreement may provide, including, without limitation:

(A) Terms pertaining to custody and application of proceeds;

(B) Remedies on default;

(C) The rights, duties, and obligations of the officers and legislative body of the issuer and the trustee, if any; and

(D) The rights of the owners of the obligations.

(c) Successive obligations may be issued for the purpose of financing the same property.

(d)(1) The total annual principal and interest payments in each fiscal year on the obligations shall be charged against and paid from the general revenues of the issuer for the fiscal year, including road fund revenues.

(2) The obligations shall not be deemed to be revenue bonds for purposes of any statute, and it shall not be necessary for a public hearing to be held by the legislative body or a delegate thereof on the issuance of the obligations.

(e)(1) The ordinance authorizing the obligations may provide for execution by the chief executive officer of the issuer of a short-term financing agreement or agreements defining the rights of the owners of obligations and, in the case of a trust indenture, provide for the appointment of a trustee for the owners of the obligations.

(2) The ordinance or short-term financing agreement may provide for priority between and among successive issues and may contain any of the provisions set forth in subsection (b) of this section and any other terms, covenants, and conditions that are deemed desirable.

(f) The obligations may be sold at public or private sale for the price, including, without limitation, sale at a discount and in a manner as the legislative body of the issuer may determine.

(g) The obligations shall be signed by the chief executive officer of the issuer and shall be executed in the manner provided by the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq.

(h) It shall be plainly stated in the obligation, ordinance, or short-term financing agreement that the obligation has been issued under the provisions of this chapter and Arkansas Constitution, Amendment 78.

History. Acts 2001, No. 1808, § 3.

14-78-104. Refunding obligations.

(a) Obligations may be issued under this chapter to refund any outstanding short-term financing obligations issued pursuant to Ar-

kansas Constitution, Amendment 78, whether or not issued under this chapter.

(b)(1) Refunding obligations may be either sold for cash or delivered in exchange for the outstanding obligations being refunded.

(2) If sold for cash, the proceeds may be applied to the payment of the obligations refunded or deposited in irrevocable trust for the retirement thereof, either at maturity or on an authorized redemption date.

(c) Refunding obligations shall in all respects be authorized, issued, and secured in the manner provided in this section.

(d) Refunding obligations shall mature not later than five (5) years beyond the issue date for the obligations being refunded.

History. Acts 2001, No. 1808, § 4.

14-78-105. Obligations may be secured by mortgage lien.

(a) The ordinance or short-term financing agreement may impose or authorize the imposition of a foreclosable mortgage lien upon the property financed or refinanced, in whole or in part, with the proceeds of obligations issued under this chapter.

(b) The nature and extent of the mortgage lien may be controlled by the ordinance or short-term financing agreement, including provisions pertaining to the release of all or part of the land, buildings, facilities, and equipment from the mortgage lien, the priority of the mortgage lien in the event of successive issues of obligations, and authorizing any owner of obligations, or a trustee on behalf of all owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, compel the performance of the duties of the officials of the issuer set forth in this chapter, the ordinance or short-term financing agreement authorizing the securing of the obligations.

(c) Obligations which are discharged or are secured by deposit in irrevocable trust shall not be taken into account in determining the aggregate principal amount outstanding for the purpose of Arkansas Constitution, Amendment 78, § 2.

History. Acts 2001, No. 1808, § 5.

14-78-106. Tax exemption.

Obligations issued under this chapter and all amounts treated as interest thereon shall be exempt from all state, county, and municipal taxes.

History. Acts 2001, No. 1808, § 6.

14-78-107. Obligations are negotiable instruments.

Unless set forth in the ordinance, obligation, or short-term financing agreement, all obligations issued under the provisions of this chapter

are negotiable instruments within the meaning of the negotiable instruments law of the state.

History. Acts 2001, No. 1808, § 7.

14-78-108. Nonliability.

No officer, employee, or member of the legislative body of the issuer shall be personally liable for any obligations issued under the provisions of this chapter or for any damages sustained by any person in connection with any contracts entered into to carry out the purposes and intent of this chapter, unless the person acted with corrupt intent.

History. Acts 2001, No. 1808, § 8.

14-78-109. Supplemental nature of this chapter.

(a) The provisions of this chapter are supplemental to constitutional or statutory provisions now existing or later adopted which may provide for the financing of real or personal property.

(b) Nothing contained in this chapter shall be deemed to be a restriction or limitation upon alternative means of financing previously available or made available to municipalities or counties for the purposes of this chapter.

(c)(1) It is hereby recognized that Arkansas Constitution, Amendment 78, is self-executing.

(2) Nothing contained in this chapter shall be deemed to require a municipality or county to utilize the provisions of this chapter in authorizing and issuing short-term financing obligations under Arkansas Constitution, Amendment 78.

History. Acts 2001, No. 1808, § 9.

14-78-110. Construction.

This chapter shall be construed liberally to effectuate the legislative intent and the purposes of this chapter as complete and independent authority for the performance of every act and thing authorized, and all powers granted under this chapter shall be broadly interpreted to effectuate the intent and purposes, and not as a limitation of powers.

History. Acts 2001, No. 1808, § 10.

SUBTITLE 5. IMPROVEMENT DISTRICTS GENERALLY

CHAPTER 86

GENERAL PROVISIONS

SUBCHAPTER.

1. General Provisions.

SUBCHAPTER
3. NOTICE ON FORMATION OF IMPROVEMENT DISTRICT.
21. IMPROVEMENT DISTRICTS AND PROTECTION DISTRICTS PROCEDURES WHEN COUNTY COLLECTOR USED FOR COLLECTION OF ASSESSMENTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
14-86-103. Reporting.

14-86-103. Reporting.

(a) Definitions.

As used in this section, "district" means any levee, drainage, irrigation, watershed, or river improvement district in Arkansas, including, but not limited to, those districts:

(1) Formed or operating under this chapter, § 14-87-101 et seq., § 14-88-101 et seq., § 14-89-101 et seq., § 14-90-101 et seq., § 14-91-101 et seq., § 14-92-101 et seq., § 14-93-101 et seq., § 14-94-101 et seq., § 14-95-101 et seq., § 14-114-101 et seq., § 14-115-101 et seq., § 14-117-101 et seq., § 14-118-101 et seq., § 14-119-101 et seq., § 14-120-101 et seq., § 14- 121-101 et seq., § 14-122-101 et seq., § 14-123-101 et seq., § 14-124-101 et seq., and § 14-125-101 et seq.; or

(2) Created by a special act of the General Assembly.

(b)(1) On or before December 31, 2009, each district shall file an initial report with the clerk of the county court in whose jurisdiction any property of the district is located.

(2) The initial report shall include the following:

(A) The name of the district;

(B) The date on which the district was formed;

(C) The statutory or other legal authority under which the district was formed;

(D) A description of the district's boundaries and a map of the district;

(E) The names and addresses of the district's directors and its officers and their respective terms of office;

(F) An identification of any vacancy on the district board or district commission;

(G) A map of the parcels of property located in the district; and

(H) The time, date, and location of the district board's or district commission's next annual meeting or, if the annual meeting is unscheduled, the time, date, and location of the district board's or district commission's next meeting.

(c) On or before December 31, 2010, and annually afterwards, the district shall file with the clerk of the county court in whose jurisdiction any property of the district is located a report that:

(1) Provides the names and addresses of the members of the district board or district commission and its officers;

(2) Identifies any vacancy on the district board or the district commission; and

(3) Provides the time, date, and location of the district board's or district commission's next annual meeting, if scheduled, and its next regularly scheduled meeting.

(d)(1) A district that fails to perform any of the requirements of subsection (b) or subsection (c) of this section commits a violation punishable by a fine of not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000) for each offense.

(2) Any fine recovered under subdivision (d)(1) of this section shall be deposited into the county clerk's cost fund.

(3) A district shall not receive financial assistance from any state agency for a two-year period following the date the fine was assessed under subdivision (d)(1) of this section.

History. Acts 2009, No. 386, § 1; 2011, No. 778, § 2.

Amendments. The 2011 amendment deleted the (d)(1)(A) designation, redesignated (d)(1)(B) as (d)(2), and redesignated (d)(2) as (d)(3); substituted "subsection (b) or subsection (c)" for "subdivision (b) or (c)" in (d)(1); and substituted "(d)(1)" for "(d)(1)(A)" in (d)(2) and (d)(3).

Subchapter 3 — Notice on Formation of Improvement District

SECTION.
14-86-302. Applicability.

14-86-302. Applicability.

(a) The provisions of this subchapter shall not be applicable to any city, county, or area which is under an order from the Arkansas Department of Environmental Quality and the United States Environmental Protection Agency to meet the minimum requirements of the United States Environmental Protection Agency for sanitary sewer discharge.

(b) The provisions of this subchapter shall not be applicable to levee, drainage, fire protection, or road improvement districts.

History. Acts 1981, No. 546, § 1; A.S.A. 1947, § 20-1159; Acts 1999, No. 1164, § 123; 2005, No. 1197, § 1.

Subchapter 12 — Delinquent Improvement Taxes and Assessments in Counties with a Population Exceeding 75,000

14-86-1204. Time when taxes delinquent.

CASE NOTES

Applicability.

This specific statute, dealing with when special improvement taxes became delinquent, was applicable to a municipal water improvement district's foreclosure action against a taxpayer because the District never adopted the general taxes provision of § 26-36-201 by an ordinance; thus, a portion of the District's foreclosure action was time barred. Wilkins & Assocs.

v. Vimy Ridge Mun. Water Improvement Dist. No. 139, 373 Ark. 580, 285 S.W.3d 193 (2008).

Subchapter 21 — Improvement Districts and Protection Districts Procedures when County Collector Used for Collection of Assessments

SECTION.
14-86-2101. Legislative intent.
14-86-2102. Annual improvement district or protection district filing.
14-86-2103. County treasurers — Retention of fees.
14-86-2104. Delinquent levies.
14-86-2105. District levies not to be certified for delinquency.

14-86-2101. Legislative intent.

This subchapter applies to all improvement districts or protection districts organized under Arkansas law that use the county collector for collection of improvement district assessments or protection district assessments unless otherwise noted.

History. Acts 2011, No. 210, § 1.

14-86-2102. Annual improvement district or protection district filing.

(a) By March 1 of each year or upon the creation of an improvement district or protection district, an improvement district or protection district that uses or intends to use the county collector for collection of improvement district assessments or protection district assessments shall:

(1)(A) File an annual report with the county clerk in any county in which a portion of the improvement district or protection district is located.

(B) The annual report shall be available for inspection and copying by assessed landowners in the district.

(C) The county clerk shall not charge any costs or fees for filing the annual report.

(D) The improvement district or protection district shall deliver a filed copy of the annual report to the county collector within five (5) days of filing; and

(2) The annual report shall contain the following information as of December 31 of the current calendar year:

(A) Identification of the primary statute under which the improvement district or protection district was formed;

(B) A general statement of the purpose of the improvement district or protection district;

(C) A list of contracts, identity of the parties to the contracts, and obligations of the improvement district or protection district;

(D)(i) Any indebtedness, including bonded indebtedness, and the reason for the indebtedness.

(ii) The stated payout or maturity date of the indebtedness, if any, shall be included.

(iii) The total existing delinquent assessments and the party responsible for the collection;

(E) Identification of the improvement district or protection district commissioners and contact information;

(F) The date, time, and location for any scheduled meeting of the improvement district or protection district for the following year;

(G) The contact information for the improvement district or protection district assessor;

(H) Information concerning to whom the county treasurer is to pay improvement district or protection district assessments;

(I) An explanation of the statutory penalties, interest, and costs;

(J) The method used to compute improvement district or protection district assessments; and

(K) A statement itemizing the income and expenditures of the improvement district or protection district, including a statement of fund and account activity for the improvement district or protection district.

(b)(1) An improvement district or protection district that does not comply with subsection (a) of this section commits a violation punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

(2) A fine recovered under subdivision (b)(1) of this section shall be deposited into the county clerk's cost fund.

(c)(1) On or before December 31, the improvement district or protection district shall file its list of special assessments for the following calendar year with the county clerk.

(2)(A) After filing the list of special assessments, the improvement district or protection district shall deliver a copy of the filed list of special assessments to the preparer of the tax books.

(B) If the county collector is not the designated preparer of the tax books, the improvement district or protection district shall deliver a copy of the filed list of special assessments to the county collector.

(3) The list of special assessments shall contain:

(A) A list of each parcel with an assessment levied against it within the improvement district or protection district; and

(B) The contact information for the improvement district assessor or protection district assessor.

(4) The list of fees shall not include assessments on parcels that otherwise would not appear on the tax books for the following year.

(5) After the December 31 deadline to file the list of special assessments, the county collector may reject an assessment submitted by the improvement district or protection district for inclusion in the list of special assessments.

History. Acts 2011, No. 210, § 1.

14-86-2103. County treasurers — Retention of fees.

(a) A county treasurer may retain up to five percent (5%) of all remittances to a fire district in reserve for up to sixty (60) days.

(b) Upon approval of the governing body of a fire district, a county treasurer may retain up to ten percent (10%) of all remittances to a fire district in reserve until final settlement is made in December of each year.

History. Acts 2011, No. 210, § 1.

14-86-2104. Delinquent levies.

(a)(1) A county collector may certify all delinquent levies to an improvement district or protection district for collection after January 1 of each year.

(2)(A) A county collector shall accept a delinquent levy after certification to an improvement district or protection district if the payor is paying:

(i) In person; and

(ii) By separate check from the payment of ad valorem taxes.

(B) The county collector shall forward the delinquent levy to the improvement district or protection district.

(C)(i) The county collector is not required to provide a receipt for the payment of the delinquent levy.

(ii) The payor is responsible for obtaining a receipt for payment of the delinquent levy from the improvement district or protection district.

(b) A county collector who continues to collect and remit delinquent levies to the improvement district or protection district after certification shall impose penalties against the payor on behalf of the improvement district or protection district.

History. Acts 2011, No. 210, § 1.

14-86-2105. District levies not to be certified for delinquency.

The county collector shall not certify an improvement district levy or protection district levy to the Commissioner of State Lands for delinquency.

History. Acts 2011, No. 210, § 1.

CHAPTER 88

MUNICIPAL IMPROVEMENT DISTRICTS GENERALLY

SUBCHAPTER.

3. Members — Increase in Number in Certain Cities.

SUBCHAPTER
4. OFFICERS SERVING DISTRICTS.

SUBCHAPTER 3 — MEMBERS — INCREASE IN NUMBER IN CERTAIN CITIES

SECTION.
14-88-301. Appointment of commissioners.
14-88-303. Vacancies generally.
14-88-305. Removal of member.
14-88-312. Members — Increase in number in certain cities.

Effective Dates. Acts 1999, No. 1505, § 8: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the various laws regulating the boards of commissioners of municipal improvement districts contain provisions which provide for the lifetime appointments of commissioners and do not allow for the prompt removal of commissioners when the situations might be in the best interest of the districts and its members, and that these restrictions mean that these small government bodies are often unresponsive to the district's property owners who benefit from the services and pay the assessments for these improvement districts. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

14-88-301. Appointment of commissioners.

(a)(1)(A)(i) In the ordinance creating a municipal improvement district, the city or town council shall appoint three (3) owners of real property therein as commissioners, who shall compose a board of improvement for the district.

(ii) The number of commissioners for any improvement district created under this section may be increased by ordinance of the city or town council from three (3) to five (5) members.

(B)(i)*(a)* Beginning on and after July 1, 1999, in cities of the first class with a population of between sixty-one thousand five hundred (61,500) and sixty-two thousand (62,000) persons according to the 1990 federal decennial census, the commissioners serving at that time and any board of commissioners of new districts created after that date shall have terms of office of six (6) years and shall serve until their successors are duly selected and qualified.

(b) These terms of office shall begin January 1, 2000, for commissioners serving at that time or the January 1 next following the creation of the district.

(ii) For the initial terms, the commissioners shall select one (1) of their number to serve for two (2) years, one (1) to serve for four (4) years, and one (1) to serve for six (6) years.

(iii) The names and terms so selected shall be certified to the city clerk on or before January 1 of the applicable year.

(iv)*(a)* Before the end of a commissioner's term, the city council shall appoint an owner of real property in the district as a new commissioner.

(b) Except for persons having been removed as a commissioner, any person serving or having served as a commissioner may be reappointed, but need not necessarily be reappointed.

(2) In cities operating under a commission form of government, the mayor and city commissioners, by virtue of their offices, shall be commissioners of each improvement district and shall compose the board of improvement of each district.

(b) The ordinance may be in the following form:

"AN ORDINANCE ESTABLISHING .... IMPROVEMENT DISTRICT NO. .....

"WHEREAS, parties claiming to be the owners of two-thirds in assessed value of the property located within the territory hereinafter described have filed a petition praying that an improvement district be established for the purpose hereinafter set out.

"WHEREAS, after due notice as required by law, the City (or Town) Council of the City (or Town) of .... has heard all parties desiring to be heard, and has ascertained that said petition was signed by two-thirds in assessed value of the owners of real property within said territory;

"NOW, THEREFORE, BE IT ORDAINED by the City (or Town) Council of the City (or Town) of .....

"Section 1. There is hereby established an improvement district embracing the following property .... (here describe territory) .... for the purpose of .... (here describe the purpose) .....

"Said district shall be known as .... Improvement District No. ....; and .....,

.....

and ..... are hereby named commissioners, who shall compose the Board of Improvement for said district.

"Section 2. This ordinance shall take effect and be in force from and after its passage."

History.

Acts 1929, No. 64, § 4; 1935, No. 145, § 3; Pope's Dig., § 7283; Acts 1941, No. 7, § 1; A.S.A. 1947, § 20-109; Acts 1999, No. 1505, § 1; 2003, No. 550, § 1.

14-88-303. Vacancies generally.

(a) All vacancies that may occur after a municipal board shall have been organized shall be filled by the city or town council.

(b) If all places on the board shall become vacant or those appointed shall refuse or neglect to act, new members shall be appointed by the council, as in the first instance, except that after July 1, 1999, in cities of the first class with a population of between sixty-one thousand five hundred (61,500) and sixty-two thousand (62,000) persons according to the 1990 Federal Decennial Census, new members shall be appointed

only for the remainder of the vacant term and no person who is removed as a commissioner shall qualify.

History. Acts 1881, No. 84, § 3, p. 161; 1909, No. 81, § 1, p. 224; C. & M. Dig., § 5716; Pope's Dig., § 7356; Acts 1961, No. 70, §§ 1, 2; A.S.A. 1947, § 20-116; Acts 1999, No. 1505, § 2.

14-88-305. Removal of member.

(a)(1) The city or town council shall have the power to remove a municipal board of improvement or any member thereof by a two-thirds (⅔) vote of the whole number of aldermen elected to the council.

(2)(A) Removal shall be for cause only, and after a hearing upon sworn charges proffered in writing by some real property owner in the district.

(B) Ten (10) days' notice of the hearing of the charges shall be given.

(b)(1) The council shall have the power to remove the board or any member thereof by a vote of a majority of the whole number of aldermen elected to the city council, upon the written petition of the owners of a majority in assessed value of the property located within the district, after a hearing upon ten (10) days' notice to each member of the board affected.

(2) After July 1, 1999, in cities of the first class with a population of between sixty-one thousand five hundred (61,500) and sixty-two thousand (62,000) persons according to the 1990 Federal Decennial Census, the council shall have the power to remove the board or any member by a vote of a majority of the whole number of aldermen elected to the city council, upon the written petition of twenty-five percent (25%) of the owners of real property located within the district stating that the petitioners believe it to be in the best interest of the district and after a hearing upon ten (10) days' notice to each member of the board affected.

History. Acts 1881, No. 84, § 3, p. 161; 1909, No. 81, § 1, p. 224; C. & M. Dig., § 5716; Pope's Dig., § 7356; Acts 1961, No. 70, §§ 1, 2; A.S.A. 1947, § 20-116; Acts 1999, No. 1505, § 3.

14-88-312. Members — Increase in number in certain cities.

(a)(1) Whenever a majority in value of the owners of real property in any municipal improvement district in cities of the first class with a population of between sixty-one thousand five hundred (61,500) and sixty-two thousand (62,000) persons according to the 1990 Federal Decennial Census shall petition the city council of the creating municipality for the board of improvement to be enlarged from three (3) members to five (5) members, then the city council shall pass an ordinance to expand the number of members of the board of improvement for the district, and to appoint two (2) additional owners of real property as commissioners of the district. Thereafter, the total mem-

bership of the board of improvement shall consist of five (5) members who shall serve staggered terms of three (3) years.

(2) The initial terms of office of the two (2) additional members shall be determined by the appointing ordinance with one (1) individual serving an initial term of three (3) years and the second individual serving an initial term of two (2) years. Thereafter, the terms of office shall be three (3) years.

(3) Commissioners serving at the time the petition is filed shall continue to serve.

(b) Vacancies in the two (2) additional commissioners' positions shall be filled in the same manner as provided for filling vacancies under § 14-88-303. The position shall be filled for the remainder of the unexpired term, except that no person who is removed as a commissioner shall qualify.

(c) All action by the board of commissioners of any municipal improvement district affected by this section shall be by a majority vote of the membership of the board of improvement.

History. Acts 1999, No. 1505, § 4.

Subchapter 4 — Officers Serving Districts

SECTION.
14-88-404. Appointment of treasurer.

14-88-404. Appointment of treasurer.

(a)(1) A municipal board of improvement may appoint a treasurer of the district, who shall take the oath of office prescribed by § 14-88-302 and shall execute a bond in favor of the board in a sum equal to the amount of moneys that will probably come into his or her hands in any one (1) year.

(2) The bond shall be signed by a corporate surety company authorized to do business as such in this state. It shall be conditioned that the treasurer will faithfully discharge the duties of his or her office and that he or she will account for and pay over all moneys that may come into his or her hands according to law and the orders of the board.

(b) The same person may be treasurer of more than one (1) district, but moneys of each shall be kept separately.

(c)(1) The treasurer shall pay out no moneys except on order of the board.

(2) Upon order of the board to pay out moneys, the chair or one (1) of the other commissioners appointed to act on behalf of the chair shall approve the warrant.

History. Acts 1949, No. 195, § 24; 1953, No. 210, § 1; A.S.A. 1947, § 20-124.1; Acts 2007, No. 131, § 1.

Amendments. The 2007 amendment added (c)(2) and redesignated the existing provisions as (c)(1); deleted "and upon a warrant approved by the chairman or one (1) of the other commissioners duly ap-

pointed to act in behalf of the chairman" at the end of (c)(1); and made stylistic changes.

CHAPTER 89

FISCAL AFFAIRS OF MUNICIPAL IMPROVEMENT DISTRICTS

SUBCHAPTER.
10. Payment of Moneys.
11. Annual Financial Settlements.
14. Annual Financial Report.
15. Quarterly Financial Reports.

Subchapter 10 — Payment of Moneys

SECTION.
14-89-1001. Payment by treasurer.

14-89-1001. Payment by treasurer.

(a)(1) The treasurer of a board of improvement shall pay out no moneys save upon the order of the municipal board of improvement.

(2) Upon the order of the municipal board of improvement to pay out moneys, the chair shall sign the warrant.

(b) The treasurer shall be allowed a commission not exceeding one percent (1%) upon all sums lawfully paid out, to be fixed by the board.

History. Acts 1881, No. 84, § 13, p. 161; 1897, No. 16, § 4, p. 23; C. & M. Dig., § 5705; Pope's Dig., § 7344; A.S.A. 1947, § 20-226; Acts 2007, No. 131, § 2.

Amendments. The 2007 amendment added the (a)(1) and (b) designations; added (a)(2); deleted "upon a warrant signed by the chairman thereof" at the end of (a)(1); and made a stylistic change in (b).

Subchapter 11 — Annual Financial Settlements

SECTION.
14-89-1102. Filing requirement.

14-89-1102. Filing requirement.

(a)(1) Annually on or before March 1, all municipal boards of improvement created under § 14-88-212 shall file a settlement with the clerk of the city or town in which the improvements shall have been ordered showing all collections and money received and paid out, with proper vouchers for all payments.

(2) The settlement may be included with the report required by § 14-86-2102.

(b) The settlement shall lie over for one (1) month for examination and adjustment, during which time any taxpayer of the district may file exceptions to the settlement.

History. Acts 1895, No. 140, § 1, p. 205; C. & M. Dig., § 5718; Pope's Dig., § 7358; A.S.A. 1947, § 20-228; Acts 2011, No. 210, § 3.

Amendments. The 2011 amendment redesignated former (a) as present (a)(1); substituted "on or before March 1" for "during the month of September" in (a)(1); and added (a)(2);

Subchapter 14 — Annual Financial Report

SECTION.
14-89-1402. Filing required.

14-89-1402. Filing required.

(a)(1) All improvement districts in any city or incorporated town in this state established for the purpose of making improvements for municipal purposes shall file an annual financial report with the city clerk or recorder of the city or town on or before March 1 of each year, covering the financial affairs of the districts for the preceding year.

(2) All improvement districts in any city or incorporated town in this state established for the purpose of providing electric utility services for municipal purposes shall file an annual financial report with the city clerk or recorder of the city or town on or before June 1 of each year, covering the financial affairs of the districts for the preceding year.

(3) The annual financial report may be included with the report required by § 14-86-2102.

(b) The annual financial report shall be certified and filed as provided in this section by the commissioners of each district.

History. Acts 1959, No. 154, § 1; A.S.A. 1947, § 20-241; Acts 2011, No. 210, § 4; 2011, No. 1225, § 1.

Amendments. The 2011 amendment by No. 210 added (a)(2); and, in (b), substituted "annual financial report" for "statement" and "commissioners" for "chief financial officer."

The 2011 amendment by No. 1225 inserted present (a)(2).

Subchapter 15 — Quarterly Financial Reports

SECTION.
14-89-1501. Quarterly financial reports.

14-89-1501. Quarterly financial reports.

(a) All improvement districts in any city or incorporated town in this state established for the purpose of making improvements for municipal purposes shall meet at least four (4) times per year or quarterly.

(b)(1) At each quarterly meeting of the improvement district, a financial report shall be included as an item on the agenda.

(2) The financial report shall be provided to any member of the public who requests a copy of the report.

History. Acts 2007, No. 132, § 1.

CHAPTER 90

ASSESSMENTS BY MUNICIPAL IMPROVEMENT DISTRICTS

Subchapter 5 — Appeals from Assessments

14-90-501. Notice and hearing.

RESEARCH REFERENCES

ALR. What Constitutes Plain, Speedy, and Efficient State Remedy Under Tax Injunction Act (28 USCS § 1341), Prohibiting Federal District Courts from Interfering with Assessment, Levy, or Collection of State Business Taxes. 31 A.L.R. Fed. 2d 237.

Subchapter 8 — Payment of Assessments

14-90-801. Ordinance providing for installments.

CASE NOTES

Failure to Comply.

Appellant's appeal from the circuit court's order granting appellee's motion for summary judgment was dismissed because the appellate court was barred from considering the appeal under Ark. R. Civ. P. 54(b) due to the lack of a final order as claims against multiple parties might remain viable, and further, the addendum prepared by appellant appeared to be deficient because it did not contain a copy of the city ordinance that was mandated by § 14-90-801 to provide for the payment of an assessment of special improvement district taxes. Wilkins & Assocs. v. Vimy Ridge Mun. Water Improvement Dist. 139, 369 Ark. 50, 250 S.W.3d 246 (2007).

14-90-804. Contesting payment.

RESEARCH REFERENCES

ALR. What Constitutes Plain, Speedy, and Efficient State Remedy Under Tax Injunction Act (28 USCS § 1341), Prohibiting Federal District Courts from Interfering with Assessment, Levy, or Collection of State Business Taxes. 31 A.L.R. Fed. 2d 237.

CHAPTER 92

SUBURBAN IMPROVEMENT DISTRICTS

SUBCHAPTER.

2. Suburban Improvement Districts Generally.
6. Collection of Taxes.

Subchapter 2 — Suburban Improvement Districts Generally

SECTION.
14-92-202. Applicability of 1981 amendments.
14-92-209. Removal of commissioners — Vacancies.
14-92-219. Purposes for which district organized.
14-92-230. Extension and collection of taxes.
14-92-234. Notes, bonds, or evidences of debt.
14-92-237. Dissolution or conversion of district.

14-92-202. Applicability of 1981 amendments.

(a) The provisions of Acts 1981, No. 510, shall not apply to districts in existence on March 16, 1981, and these districts shall continue to be governed by the law in effect immediately prior to that date.

(b)(1) Upon the petition of thirty-five percent (35%) of the property owners of a district in existence on March 16, 1981, the district shall be subject to the provisions of § 14-92-209 concerning the election of commissioners to fill vacancies on the commission and concerning the recall of commissioners.

(2) The petition may also provide for the board of commissioners to be enlarged from three (3) members to five (5) members and may provide for the imposition of a specified term of years on the board positions. If the petition requests a board of commissioners composed of five (5) members, then two (2) additional commissioners shall be elected in the same manner as provided for filling vacancies under § 14-92-209(b).

(3) Commissioners serving at the time the petition is filed shall continue to serve.

(4) The petition shall be filed with the circuit court of the judicial district in which most of the district is located.

(c) Subsection (a) of this section shall not apply to any improvement district in any city or incorporated town in this state established for the purpose of providing water or sewer services for municipal purposes.

History. Acts 1981, No. 510, § 9; A.S.A. 1947, § 20-744; Acts 1993, No. 782, § 1; 2011, No. 1225, § 2.

Amendments. The 2011 amendment substituted "property owners" for "realty owners" in (b)(1); inserted "and may provide for the imposition of a specified term of years on the board positions" in (b)(2); and added (c).

14-92-209. Removal of commissioners — Vacancies.

(a) A commissioner of a suburban improvement district established pursuant to this subchapter may be removed from office as follows:

(1) An owner of realty within the district may petition the county court to call a public hearing for the purpose of the removal of a commissioner named in the petition and the election of a successor; and

(2) Upon determining that at least twenty-five percent (25%) of the number of owners of realty within the proposed district have signed the recall petition, the court shall call a public hearing on the matter and shall notify each owner of realty within the proposed district in the

manner prescribed by § 14-92-204, except that the notice shall be mailed by first class mail.

(3) Upon the affirmative vote of a majority, but not less than twenty-five percent (25%) of all votes entitled to be cast, of all votes cast by owners in attendance, in person or by proxy, at the public meeting as recorded through the number voting "yea" and the number voting "nay", a commissioner named in the recall petitions may be removed.

(4) The court shall at the meeting declare the commissioner removed and accept nominations for a successor commissioner.

(5)(A) The successor commissioner shall be nominated by a realty owner in attendance, in person or by proxy, at the public hearing.

(B) The nominee shall meet the qualifications required of the commissioner originally elected.

(6) A successor commissioner shall be elected from among those so nominated at a subsequent public meeting called and held by the court in accordance with the provisions of § 14-92-204, except that any required notice shall be mailed by first class mail.

(b) A successor commissioner to fill a vacancy on the board of commissioners due to any other reason than proceedings under subsection (a) of this section shall be nominated at a public hearing called by the county court within thirty (30) days of notification of the vacancy, and any required notice shall be mailed by first class mail. The successor commissioner shall be elected at a subsequent public hearing in the same manner as provided in subsection (a) of this section.

(c)(1) The provisions of subsection (a) of this section shall apply to a district in existence on March 16, 1981.

(2) A vacancy created by the recall of a commissioner shall be filled in the manner as provided in subsection (a) of this section.

(d)(1) The provisions of subsection (b) of this section shall apply to a district in existence on March 16, 1981, and which is an improvement district in any city or incorporated town in this state established for the purpose of providing water or sewer services for municipal purposes.

(2) Any other vacancy on the board of commissioners of any other district in existence on March 16, 1981, shall continue to be filled in the manner as provided by law prior to March 16, 1981.

History. Acts 1981, No. 510, § 8; A.S.A. 1947, § 20-743; Acts 1993, No. 492, § 1; 2007, No. 598, § 1; 2011, No. 1225, §§ 3, 4.

Amendments. The 2007 amendment substituted "a commissioner" for "commissioners" throughout the section; substituted "district" for "districts" in (a); in (a)(1), substituted "An owner" for "The owners" and "a successor" for "successors"; in (a)(2), substituted "each owner" for "the owners" and added "except that the notice shall be mailed by first class mail"; substituted "'nay', a commissioner" for "'nay,' the commissioners" in (a)(3); added the (a)(5)(A) and (a)(5)(B) designations; in (a)(6), substituted "A successor commissioner" for "Successor commissioners" and added "except that any required notice shall be mailed by first class mail"; in (b), substituted "A successor commissioner" for "Successor commissioners" and "a vacancy" for "vacancies," inserted "and any required notice shall be mailed by first class mail," and substituted "The successor commissioner" for "They"; added the (c)(1) and (c)(2) and (c)(2)(A) and (c)(2)(B) designations; substituted "a district" for

"districts" in (c)(1); and substituted "Any other vacancy" for "All other vacancies" in (c)(2)(B).

The 2011 amendment deleted the (c)(2)(A) designation and (c)(2)(B); and added (d).

14-92-219. Purposes for which district organized.

A suburban improvement district may be organized for any one (1) or more of the following purposes:

(1) To purchase, accept as a gift, or construct a waterworks system or betterments, improvements, and extensions to such waterworks system, either within or without the boundaries of the district, if the property of the district will benefit and to operate and maintain any such waterworks system it may purchase, construct, or own;

(2) To purchase, accept as a gift, or construct, either within or without the boundaries of the district, if the property of the district will benefit, a sewage collection system or a sewage treatment plant or intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection or treatment, purification, and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil, and industrial waste of the area within the boundaries of the district or adjacent thereto, and to operate and maintain any such sewage system and facilities;

(3)(A) To open, grade, drain, pave, curb, gutter, or otherwise improve streets, roads, highways, and every other way for passage and use of vehicles, including viaducts and underpasses, either within or without the boundaries of the district, if the property of the district will benefit.

(B) Such purpose shall include the acquisition of rights-of-way by purchase or the exercise of the power of eminent domain, and to maintain such streets, roads, highways, and every other way for passage and use by vehicles, lying within the boundaries of the district or beyond the boundaries of the district, if the property of the district will benefit;

(4) To build, purchase, or accept as a gift recreational facilities such as, but not limited to, parks, lakes, golf courses, playgrounds, clubhouses, stadiums, auditoriums, arts and crafts centers, folklore centers, interpretative centers, camping areas, green belt areas, and any other facilities to provide for the recreation and cultural needs of the owners of the lands within the district and also to care for, maintain, and operate any such recreational facilities;

(5) To lay and maintain sidewalks;

(6)(A) To lay, own, extend, operate and maintain gas pipelines connecting with gas systems.

(B)(i) Nothing in this subchapter shall be construed to allow the purchase of an existing natural gas system or any part thereof.

(ii) Any such gas system shall be subject to the jurisdiction of the Pipeline Safety Division of the Arkansas Public Service Commission and shall be subject to all provisions of the Arkansas Gas Pipeline Code;

(7) To build telephone lines to connect with the telephone systems operating in nearby or adjacent municipalities;

(8) To establish, equip, and maintain rural fire departments, including construction of fire department buildings, purchase of fire trucks, fire boats, and other firefighting equipment;

(9) To own, acquire, construct, reconstruct, extend, equip, improve, maintain, and operate hospitals or to acquire appropriate vehicles and equipment for, maintain, and operate ambulance services;

(10) To own, acquire, construct, reconstruct, extend, equip, improve, maintain, and operate libraries; and

(11)(A) To provide a solid waste management system to adequately provide for the collection and disposal of all solid wastes generated or existing within the boundaries of the district in accordance with the rules, regulations, and orders of the Arkansas Pollution Control and Ecology Commission.

(B)(i) The governing body of the district may enter into an agreement with one (1) or more municipalities, counties, county solid waste authorities, regional solid waste management districts, private persons, private trusts, or any combination thereof, to provide a solid waste management system or any part of a system for the district.

(ii)*(a)* The district may levy and collect fees and require licenses as determined appropriate to discharge the responsibilities of the district.

(b) Any fees, charges, and licenses shall be based upon a schedule set forth by the district.

History. Acts 1941, No. 41, § 4; 1953, No. 420, § 2; 1967, No. 286, § 2; 1969, No. 230, § 2; 1975 (Extended Sess. 1976), No. 1213, § 1; A.S.A. 1947, § 20-704; reen. Acts 1987, No. 1008, § 1; 1997, No. 1134, § 1; 2005, No. 927, § 1.

14-92-230. Extension and collection of taxes.

(a)(1) When the board of commissioners in a suburban improvement district shall make the levy of taxes, it shall be the duty of the assessor to extend the amount levied and set it opposite each benefit assessed in a column marked "Annual Collection".

(2)(A) It shall be the duty of the county clerk of the county to extend the taxes annually upon the tax books of the county until the levy is exhausted.

(B) For his services, the clerk shall receive a commission of one and one-half percent (1.5%) of the amount so extended.

(b)(1)(A)(i) It shall then be the duty of the tax collector of the county to collect each year the taxes extended upon the books along with the other taxes until the entire levy is exhausted.

(ii) For his or her services in making the collections, including prepayments, the collector shall receive a commission of one and one-half percent (1.5%). In the case of prepayments, the maximum commission shall be the lesser of one and one-half percent (1.5%) or fifty dollars ($50.00).

(B) The taxes shall be paid over by the collector to the depository of the district at the same time he or she pays over the county funds.

(2) In counties operating under the unit tax ledger system, the collector shall receive a commission of one and one-half percent (1.5%) for extending the taxes and a commission of an additional one and one-half percent (1.5%) for collecting the taxes.

(c)(1) County clerks and tax collectors are authorized to employ additional deputies to do the increased work imposed by the terms of this subchapter.

(2) They may pay the deputies' salaries up to the sum of three thousand three hundred dollars ($3,300) per annum. However, the salaries shall never exceed the receipts from the commissions allowed by this subchapter.

(d) A property owner shall be required to pay applicable suburban improvement taxes provided in this subchapter as a prerequisite to paying his or her ad valorem real property taxes.

History. Acts 1941, No. 41, § 10; 1951, No. 233, § 1; 1957, No. 331, § 1; A.S.A. 1947, § 20-710; Acts 1991, No. 281, § 1; 2001, No. 1816, § 1.

14-92-234. Notes, bonds, or evidences of debt.

(a)(1) In order to meet preliminary expenses and to do the work, the board of commissioners may issue negotiable notes or bonds of the suburban improvement district signed by the chair and secretary of the board and bearing such rate or rates of interest as shall be determined by the board and may pledge and mortgage all assessments of benefits of the district and all or any part of the profits of the district derived from its operation of any waterworks, sewer system, gas system, recreational facilities, or hospital to the payment of the notes and bonds.

(2) The board may also issue to the contractors who do the work negotiable evidences of debt bearing interest at the same rate or rates prescribed by the board and secure them in the same manner.

(3) With the consent of the sellers of improvements, as provided in this chapter, it may issue to the sellers negotiable notes or bonds of the district bearing interest at the rate or rates prescribed by the board covering all or a portion of the purchase price of the improvements and secure the notes or bonds in the same manner as provided in this section.

(4) As further security for the payment of any such indebtedness, the members of the board of any district organized for the construction of waterworks or water pipes, tanks, and wells, sewer systems, gas pipelines, recreational facilities, or hospitals may be resolved to establish the water or sewer rates, rates for use of gas pipelines, rates for use of recreational facilities, or rates for use of the hospitals to be collected from the users thereof. The board may mortgage any or all of its property, including the system, buildings, equipment, lands, leases, easements, and rights-of-way.

(b) No bonds issued under the terms of this subchapter shall run for more than thirty (30) years, and all issues of bonds may be divided so that a portion thereof may mature each year as the assessments, revenues, or profits from the systems are collected, or they may all be made payable at the same time, with proper provision for a sinking fund.

(c) The bonds shall not be sold for less than par without the unanimous vote of the board.

History. Acts 1941, No. 41, § 16; 1967, No. 286, § 4; 1969, No. 230, § 3; 1970 (Ex. Sess.), No. 53, § 1; 1981, No. 703, § 3; A.S.A. 1947, § 20-716; Acts 1997, No. 1134, §§ 3, 4; 2007, No. 602, § 1.

Amendments. The 2007 amendment, in (a)(1), inserted "suburban improvement" and substituted "chair and secretary of the board" for "member of the board."

14-92-237. Dissolution or conversion of district.

(a)(1) After all bonds, notes, or other evidences of indebtedness plus all interest thereon shall have been paid in full, a suburban improvement district may, by unanimous vote of the board of commissioners, be dissolved and all future levies and assessments cancelled, the board relieved from further duties, and the surplus funds of the district distributed in accordance with the procedures set forth in subsections (b) and (c) of this section, if title to and control of the facilities constructed by the district have been taken over or assumed by any political subdivision, municipal utility commission or agency, or any regulated public utility, or a suburban improvement district may, by unanimous vote of the board of commissioners, be converted into a fire protection district and all future levies and assessments cancelled, the board relieved from further duties, and any remaining funds and any other property of the district transferred to the new entity in accordance with the procedures set forth in subsection (d) of this section.

(2) The districts are authorized, at the discretion of the commissioners, to enter into repair and maintenance agreements or contracts and to expend funds of the districts for these purposes.

(b) Any improvement district created pursuant to this subchapter may be dissolved in the same manner it was created. However, if any district having outstanding bonds or other indebtedness is dissolved, the assessed benefits being levied at the time of dissolution shall continue to be levied and collected until the outstanding bonds or other indebtedness is paid.

(c)(1)(A) If the commissioners vote to dissolve the district or the district is dissolved by vote of the realty owners at a public hearing, the board shall first pay from surplus funds all debts of the district, including any reasonable legal and other expenses incurred in connection with the dissolution, and dispose of the remaining assets under subdivision (c)(1)(B) of this section or subdivision (c)(2) of this section.

(B)(i) The commissioners shall convert all assets into cash and may refund all remaining funds of the district, pro rata, to the

property owners who hold title to the property in the district at the time the refund is made.

(ii)*(a)* The pro rata refund to the property owners shall be made on the basis of the most recent assessment or reassessment of benefits on the parcels of property before dissolution and shall be in the same proportion that the assessed benefits of each individual parcel of property bears to the total of the assessed benefits of all the property in the district.

(b) A property or owner whose property is delinquent in any sum for district assessments, penalties, or interest, at the time the refund is made shall not be counted in calculating the pro rata distribution, or receive any portion of the refund.

(C) Within ninety (90) days after the distribution of the surplus funds has been completed, the board shall file a copy of the resolution of dissolution and a financial statement of the district, verified by all commissioners, in the office of the county clerk in the county in which the district is located.

(2)(A) The commissioners may transfer all remaining cash and other monetary assets and any real property and personal property to a school district located within ten (10) miles of any boundary of the district.

(B)(i) The transfer shall be made under a valid contract between the suburban improvement district and the school district.

(ii)*(a)* The contract shall be supported by adequate consideration.

(b) As used in this section, "adequate consideration" includes public advantage that promotes a general, suitable, and efficient system of free public schools.

(C) Within ninety (90) days after the transfer of all remaining funds and property has been completed, the board shall file a copy of the resolution of dissolution and a financial statement of the suburban improvement district, verified by all commissioners, in the office of the county clerk in the county in which the suburban improvement district is located.

(d)(1) Any improvement district created pursuant to this subchapter solely for the purposes of providing fire protection services may be converted into a new fire protection district under § 14-284-201 et seq., and shall, after the conversion, be governed under the authority of that law. However, if a district has any outstanding bonds or other indebtedness, it shall not be converted until the outstanding bonds or other indebtedness is paid.

(2) In the event the commissioners vote to convert the district, the board shall choose a date certain of not less than sixty (60) days nor more than twelve (12) months at which time the conversion shall become effective and shall notify the county court of the county in which the district is located that the board has voted to convert the district and shall specifically define the area proposed to be included in the new fire protection district. After verifying that the commissioners have voted unanimously to convert the district to a proposed fire protection

district and that there is no outstanding indebtedness for the district, the county court shall enter an order establishing the district as described in the notice by the board and establishing the time and place of a public meeting to be held within the district to elect the new commissioners of the fire protection district as is otherwise provided by law.

(3) After paying all debts of the district, including any reasonable legal and other expenses incurred in connection with the conversion, the board shall transfer any and all remaining cash and other monetary assets and any real and personal property to the new district on the effective date of the conversion. All delinquent assessments of the district and any debts owed to the district shall become debts to the new district and shall be subject to collection by the new district in accordance with its powers and authority.

(4) Within ninety (90) days after the transfer of any and all remaining funds and property has been completed, the board shall file a copy of the resolution of conversion and a final financial statement of the district, verified by all commissioners, in the office of the county clerk in the county in which the district is located. The fire protection district shall be deemed to have been formed upon the date of its conversion from a suburban improvement district.

History. Acts 1941, No. 41, § 18; 1963, No. 150, § 1; 1967, No. 286, § 5; 1981, No. 510, § 5; A.S.A. 1947, § 20-718; Acts 1997, No. 323, § 1; 2009, No. 451, § 1.

Amendments. The 2009 amendment redesignated (c)(1), in (c)(1)(A) deleted "shall convert all assets into cash and" following "the board" and inserted "and dispose of the remaining assets ... (c)(2) of this section", inserted "convert all assets into cash and may" in (c)(1)(B)(i), inserted (c)(2), and made related and minor stylistic changes.

14-92-238. Lien for preliminary expenses.

CASE NOTES

Preliminary Expenses.

Judgment was reversed and the case was remanded in engineer's breach of contract case against defendant improvement district because the trial court had to determine the portion of compensatory damages awarded that qualified as "preliminary expenses" and, hence, were subject to a tax levy against the improvement district's land. Perkins v. Cedar Mt. Sewer Improvement Dist. No. 43, 360 Ark. 50, 199 S.W.3d 667 (2004).

Although all of the work performed by an engineer was preliminary to the construction phase of a sewer improvement project, the engineer had yet to complete all of the work required by the contract; once the construction began and the contract was completed, the preliminary expenses under this section would merge into the general cost of the improvement. Perkins v. Cedar Mt. Sewer Improvement Dist. No. 43, 360 Ark. 50, 199 S.W.3d 667 (2004).

Subchapter 6 — Collection of Taxes

SECTION.

14-92-602. Election to collect taxes.
14-92-603. Collection of delinquent taxes.

14-92-602. Election to collect taxes.

(a)(1) Any eligible district may elect to collect the taxes levied by it pursuant to the provisions of §§ 14-92-228 and 14-92-239. This election shall be made by resolution of the board of commissioners of the eligible district.

(2) Certified copies of the resolution shall be filed with the county clerk and county tax collector of each county in which any of the territory of the district is located, not later than July 15 of the year immediately preceding the first year in which the district will collect the taxes.

(b) Once the election is made and so long as it continues in force, the clerk shall not extend the district taxes upon the county tax books, and the collector shall not collect the district taxes. The district shall be solely responsible for collecting the district taxes, which shall be due and payable on or before October 15 of each year.

(c)(1) Once an eligible district makes the election provided for in this section to collect its own taxes, the election shall continue in effect and the district shall collect its own taxes unless and until the election is revoked.

(2)(A) The election may be revoked by resolution of the board of the district, and the filing of certified copies thereof with the clerk and collector of each county in which any of the territory of the district is located, such filing to be made on or before July 15 of any year.

(B) The revocation shall be effective as to taxes to be collected in the year immediately succeeding the year in which the revocation is filed.

History. Acts 1985, No. 430, § 2; A.S.A. 1947, § 20-747; Acts 2011, No. 175, § 1.

Amendments. The 2011 amendment substituted "October 15" for "October 10" in (b).

14-92-603. Collection of delinquent taxes.

(a) If an eligible district has elected to collect its own taxes under § 14-92-602, the district is responsible for and may take action for collecting taxes that have become delinquent.

(b)(1) An eligible district that has not elected to collect its own taxes under § 14-92-602 may elect to assume sole responsibility for the collection of the eligible district's taxes that have become delinquent.

(2)(A) An election under subdivision (b)(1) of this section shall be made by resolution of the board of commissioners of the eligible district, and a certified copy of the resolution shall be filed with the county tax collector of each county in which any of the territory of the eligible district is located, prior to October 15 of any year.

(B) The election shall be effective for taxes becoming delinquent in the year of filing.

(c)(1) If an eligible district has responsibility under this section for collecting the delinquent taxes of the district, or if the eligible district

elects to assume this responsibility, the county collector shall take no action to enforce collection of delinquent taxes.

(2) If the eligible district has elected to collect only delinquent taxes, the county collector shall report delinquencies to the board of the eligible district.

(d) If it is the responsibility of the eligible district to collect delinquent taxes, the district shall add to the amount of the tax a penalty of twenty-five percent (25%) and shall enforce collection by civil proceedings in the circuit court of the county and in the manner provided by §§ 14-121-426 — 14-121-432.

(e)(1) Once an eligible district makes the application to collect the delinquent taxes of the district, the election continues in effect until revoked.

(2)(A) Revocation shall be by resolution of the board and the filing of certified copies of the resolution with the collector of each county in which any of the territory of the eligible district is located.

(B) A filing under subdivision (e)(2)(A) of this section shall be made on or before October 15 of any year and shall be effective as to taxes becoming delinquent in that year.

History. Acts 1985, No. 430, § 3; A.S.A. 1947, § 20-748; Acts 2011, No. 175, § 2.

Amendments. The 2011 amendment substituted "October 15" for "October 10" in (b)(2)(A) and (e)(2)(B); substituted "An election under subdivision (b)(1) of this section" for "This election" in (b)(2)(A); in (d), substituted "civil proceedings" for "chancery proceedings" and "circuit court" for "chancery court"; and substituted "A filing under subdivision (e)(2)(A) of this section" for "These filings" in (e)(2)(B).

CHAPTER 93

PROPERTY OWNERS' IMPROVEMENT DISTRICTS

SECTION.
14-93-102. Legislative intent.
14-93-105. Petition to form district.
14-93-121. Extension and collection of taxes.

14-93-102. Legislative intent.

(a) It is the intent and purpose of this chapter to authorize the formation of improvement districts by the unanimous approval of all owners of real property located in the territory to be included in the district.

(b) It is the intention of Acts 1985, No. 296, to amend or repeal only such sections or subsections of Acts 1983, No. 613, as are specifically mentioned in Acts 1985, No. 296, and the remainder of Acts 1983, No. 613, shall remain in full force and effect as enacted until Acts 1983, No. 613, shall be further amended or repealed.

History. Acts 1983, No. 613, § 1; 1985, No. 296, §§ 1, 11; A.S.A. 1947, §§ 20-2401, 20-2401n; Acts 1999, No. 475, § 1.

14-93-105. Petition to form district.

(a) Upon the petition of all the owners of the record title as reflected by the deed records in the office of the circuit clerk and ex officio recorder of the pertinent county of real property in any territory, it shall be the duty of the county court to:

(1) Lay off into an improvement district the territory described in the petition for the purpose of:

(A) Purchasing, accepting as a gift, constructing, or maintaining waterworks, recreational facilities, systems of gas pipelines, and sewers;

(B) Grading, draining, paving, curbing, and guttering streets and highways and laying sidewalks;

(C) Establishing, equipping, and maintaining rural fire departments; or

(D) More than one (1) of such purposes; and

(2) Name as commissioners of the district the three (3) persons whose names appear in the petition if the petition contains names, or if not, three (3) individuals of integrity and good business ability.

(b) Portions of municipalities may be included in these districts if the portion of area located within municipalities shall be less than fifty percent (50%) of the area of the entire district.

(c) All districts shall be numbered consecutively or else shall receive names selected by the court.

(d) If the court does not act promptly in complying with the terms of this section, or of any other section of this chapter essential to the creation and operation of the district, it may be compelled to do so by mandamus.

(e)(1) If land in more than one (1) county is embraced in the proposed district, the petition shall be addressed to the circuit court in which the largest portion of the lands lie, and all proceedings shall be had in that court.

(2) Any notices in that event shall be published in newspapers published and having a bona fide circulation in each county in which the district embraces land.

(f) Any number of petitions may be circulated, and identical petitions with additional names may be filed at any time until the court acts.

History. Acts 1983, No. 613, § 3; A.S.A. 1947, § 20-2403; Acts 1987, No. 787, § 1; 1999, No. 475, § 2.

14-93-121. Extension and collection of taxes.

(a)(1) When the board shall make the levy of taxes, it shall be the duty of the assessor to extend the amount levied and set it opposite each benefit assessed in a column marked "Annual Collection".

(2)(A) It shall be the duty of the county clerk of the county to extend the taxes annually upon the tax books of the county until the levy is exhausted.

(B) For his services, the clerk shall receive a commission of one and one-half percent (1.5%) of the amount so extended.

(b)(1)(A)(i) It shall then be the duty of the tax collector of the county to collect each year the taxes extended upon the tax books along with the other taxes until the entire levy is exhausted.

(ii) For his or her services in making the collections, including prepayments, the collector shall receive a commission of one and one-half percent (1.5%). In the case of prepayments, the maximum commission shall be the lesser of one and one-half percent (1.5%) or fifty dollars ($50.00).

(B) The taxes shall be paid over by the collector to the depository of the district at the same time he or she pays over the county funds.

(2) In counties operating under the unit tax ledger system, the collector shall receive a commission of one and one-half percent (1.5%) for extending the taxes and a commission of an additional one and one-half percent (1.5%) for collecting the taxes.

(c)(1) County clerks and tax collectors are authorized to employ additional deputies to do the increased work imposed by the terms of this chapter.

(2) They may pay the deputies salaries up to the sum of five thousand dollars ($5,000) per annum. However, the salaries shall never exceed the receipts from the commissions allowed by this chapter.

(d) No property owner shall be required to pay the improvement taxes provided in this chapter as a prerequisite to paying his or her general taxes.

History. Acts 1983, No. 613, § 12; A.S.A. 1947, § 20-2412; Acts 2001, No. 1816, § 2.

CHAPTER 94

MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICT LAW

SECTION.
14-94-102. Legislative intent.
14-94-105. Petition to form district.
14-94-106. Hearing on petition and determination.
14-94-120. Extension and collection of taxes.

14-94-102. Legislative intent.

It is the intent and purpose of this chapter to authorize the formation of improvement districts by the unanimous approval of the owners of real property located in the territory to be included in the district.

History. Acts 1987, No. 113, § 1; 1993, No. 819, § 1; 1999, No. 475, § 3.

14-94-105. Petition to form district.

(a) Upon the petition of all the owners of the record title as reflected by the deed records in the office of the circuit clerk and ex officio recorder of the pertinent county, it shall be the duty of the governing body to:

(1) Lay off into an improvement district the territory described in the petition for the purpose of purchasing, accepting as a gift, constructing, or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways, including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one (1) of those purposes; and

(2)(A) Name as commissioners of the district the three (3) individuals whose names appear in the petition if the petition contains those names, and if not, then three (3) individuals of integrity and good business ability who own real property in the district or are creditors of the district or live in the district.

(B) In the event that a property owner or creditor is a corporation, partnership, trust, or other legal entity, any officer, director, trustee, employee, or other designated representative of the entity may be named and appointed as a commissioner.

(b) All the districts shall be numbered consecutively and shall receive names selected by the governing body. If the governing body does not act promptly in complying with the terms of this section, or of any other section of this chapter essential to the creation and operation of the district, it may be compelled to do so by mandamus.

(c) Any number of petitions may be circulated, and identical petitions with additional names may be filed at any time until the governing body acts.

(d) The formation and creation of such districts is authorized, in whole or in part, outside any municipality.

(e) In the event that lands to be included in a district lie in more than one (1) municipality:

(1) The municipality in which lies the largest portion of the lands, exclusive of lands which do not lie in any municipality, shall have jurisdiction to create such district and to conduct all other municipal proceedings relating thereto and to the business and affairs thereof, which municipality is referred to hereinbelow as the "creating municipality";

(2) No portion of a municipality shall be included in such district unless it shall be found by the creating municipality that the owners of real property lying within such municipality and within the district shall have petitioned for creation of such district;

(3) Notice of the filing of the petition for creation of such district shall be given by first-class mail to the mayor of each such municipality by

the clerk or recorder of the creating municipality, and each such municipality may, at any time within fifteen (15) days after the deposit of such notice in the mails, unless such notice shall be waived by resolution of the governing body of such municipality, file with the clerk or recorder of the creating municipality a certified copy of a resolution of its governing body finding that the proposed improvements do not harmonize with the community facilities plans of such municipality or would diminish vehicular or pedestrian traffic in such municipality; and

(4) In the event of the filing of the resolution described in subdivision (e)(3) of this section, the governing body of the creating municipality shall reject the petition for creation of such district.

History. Acts 1987, No. 113, § 3; 1989, No. 276, § 1; 1993, No. 819, § 1; 1995, No. 1127, § 1; 1999, No. 475, § 4.

14-94-106. Hearing on petition and determination.

(a)(1)(A) Upon the filing of the petition with the clerk, it shall be the duty of the clerk to present the petition to the mayor.

(B) The petition shall be accompanied by a certificate from a title insurance company transacting business in the municipality:

(i) Stating that the signatures on the petition constitute all of the owners of real property to be located in the district; and

(ii) Identifying any mortgagee holding a first mortgage lien on real property constituting more than ten percent (10%) in area of the real property to be located in the district.

(2)(A) The mayor shall thereupon set a date and time, not later than fifteen (15) days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the petition.

(B) Notice of the hearing shall be sent by certified mail to any mortgagee holding a first mortgage lien on real property constituting more than ten percent (10%) in area of the real property to be located in the district.

(C) The notice of hearing under subdivision (a)(2)(B) of this section shall state that any existing mortgage shall be subordinated pursuant to this section and § 14-94-118(b) if the mortgagee fails to appear at the hearing and object to formation of the district.

(b)(1) At the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district.

(2)(A) Except as provided in subdivision (b)(2)(B) of this section, if the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall then be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commission-

ers as named in the petition if commissioners are named in the petition and are property owners in or creditors of the district, or as is otherwise provided from among such property owners or creditors.

(B) If at the hearing on the petition any mortgagee holding a first mortgage lien on real property constituting more than ten percent (10%) in area of the real property to be located within the district objects to the formation of the district, then the governing body shall reject the petition for creation of the district.

(3) The petition shall state the specific purposes for which the district is to be formed, and the ordinance establishing the district shall give it a name which shall be descriptive of the purpose. It shall also receive a number to prevent its being confused with other districts for similar purposes.

(c) The ordinance establishing the district shall be published within thirty (30) days after its adoption by one (1) insertion in some newspaper of general circulation in the municipality in which the district lies.

(d) The findings of the governing body shall be conclusive unless attacked by a suit in the circuit court of the county in which the municipality is located, brought within thirty (30) days after the publication.

History. Acts 1987, No. 113, § 4; 1989, No. 276, § 2; 1995, No. 1127, § 2; 2009, No. 501, § 1; 2009, No. 1408, § 1.

Amendments. The 2009 amendment by No. 501 inserted (a)(1)(B), (a)(2)(B) and (C), and (b)(2)(B) and redesignated the remaining subdivisions accordingly; inserted "Except as provided in subdivision (b)(2)(B) of this section" in (b)(2)(A); substituted "circuit" for "chancery" in (d); and made related changes.

The 2009 amendment by No. 1408 rewrote (a)(2)(C).

14-94-120. Extension and collection of taxes.

(a)(1) When the board shall make the levy of taxes, it shall be the duty of the assessor to extend the amount levied and set forth the amount in the assessment book opposite each benefit assessed in a column marked "Annual Collection". The assessor shall file a certified copy of the completed assessment book with the county clerk.

(2)(A) It shall be the duty of the county clerk of the county to extend the taxes annually upon the tax books of the county until the levy is exhausted.

(B) For his or her services, he or she shall receive a commission of one and one-half percent (1.5%) of the amount so extended.

(b)(1)(A)(i) It shall then be the duty of the collector of the county to collect each year the taxes extended upon the tax books along with the other taxes until the entire levy is exhausted.

(ii) For his or her services in making the collections, including prepayments, the collector shall receive a commission of one and one-half percent (1.5%). In the case of prepayments, the maximum commission shall be the lesser of one and one-half percent (1.5%) or fifty dollars ($50.00).

(B) The taxes shall be paid over by the collector to the district at the same time he or she pays over the county funds.

(2) In counties operating under the unit tax ledger system, the tax collector shall receive a commission of one and one-half percent (1.5%) for extending the taxes and a commission of an additional one and one-half percent (1.5%) for collecting the taxes.

(c) No property owner shall be required to pay the taxes provided for in this subchapter as a prerequisite to paying his or her general taxes.

History. Acts 1987, No. 113, § 12; 2001, No. 1816, § 3.

14-94-123. Negotiable notes, bonds, or evidence of debt.

CASE NOTES

Trust Indentures.

Pledge and mortgage agreements entered into between municipal improvement districts and trustee of public bond financing, while termed by the parties as a trust, were actually more akin to a trust indenture; therefore, a breach of contract cause of action existed on the part of the districts against the trustee when the trustee failed to perform its obligations under the pledge and mortgage agreements. First United Bank v. Phase II, Edgewater Addition Residential Prop. Owners Improvements Dist. No. 1 of Maumelle, 347 Ark. 879, 69 S.W.3d 33 (2002).

14-94-127. Lien for preliminary expenses.

CASE NOTES

Constitutionality.

The absence of language in this section directing the chancery court to use a particular method for computing the tax levy bestows upon the judiciary a nondelegable power of the legislature in violation of the separation of powers provisions of the Arkansas Constitution. Robert D. Holloway, Inc. v. Pine Ridge Addition Residential Property Owners, 332 Ark. 450, 966 S.W.2d 241 (1998).